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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 524. 210.

JESUS QUEVAS, SOMETIMES CALLED JESUS CUEVO, ET AL., PLAINTIFFS IN ERROR,

vs.

J. DOWNEY HARVEY, ADMINISTRATOR OF THE ESTATE OF JOHN G. DOWNEY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED FEBRUARY 15, 1897.

(17,663.)

23314

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 537.

JESUS QUEVAS, SOMETIMES CALLED JESUS CUEVO, ET AL., PLAINTIFFS IN ERROR,

vs.

J. DOWNEY HARVEY, ADMINISTRATOR OF THE ESTATE OF JOHN G. DOWNEY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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a UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the honorable the judges of the supreme court of the State of California, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of California before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between J. Downey Harvey, administrator of the estate of John G. Downey, deceased, plaintiff, and Jesus Quevas, sometimes called Jesus Cuevo, named in the complaint herein as Henry Roe Quevas; José Quevas, sometimes called José Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; José Maria Quilpe, named in the complaint as John Green; Francisca Quilpe, named in the complaint as Mary Green; Maria Quilpe; Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; Maria Nacho, named in complaint herein as Sarah Green; Angel Quilpe; José Dolores Palawish, sometimes called José Dolores; José Felix, sometimes called Felix Wichonla; Madelina Palawish; Matilda Quevas, sometimes called Matilda Palawish; Jacobo Palawish, sometimes called Acovo Palawish; José Juan, sometimes called José Juan Palawish; Jacobo Dominga Palawish; Maria Antonio Guachona, sometimes called Maria Antonio Wichonla; Maria Jesus Colol; Sebastian Palawish; Josefa Palawish; Josefa Guachona, sometimes called Josefa Wichonla; Maria Los Angeles Palawish; Manuel Palawish; and Pelegrino Palawish, defendants, wherein was drawn in question the construction of a clause
b of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Jesus Quevas, sometimes called Jesus Cuevo, named in complaint herein as Henry Roe Quevas; José Quevas, sometimes called José Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; José Maria Quilpe, named in complaint as John Green; Francisca Quilpe, named in complaint as Mary Green; Maria Quilpe; Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; Maria Nacho, named in complaint herein as Sarah Green; Angel Quilpe; José Dolores Palawish, sometimes called José Dolores; José Felix, sometimes called Felix Wichonla; Madelina Palawish; Matilda Quevas, sometimes called Matilda Palawish; Jacobo Palawish, sometimes called Acovo Palawish; José Juan, sometimes called José Juan Palawish; Jacobo Dominga Palawish; Maria Antonia Guachona, sometimes called Maria Antonio Wichonla; Maria Jesus Colol; Sebastian Palawish; Josefa Guachona, sometimes called Josefa Wichonla; Maria Los Angeles Palawish; Manuel Palawish; and Pelegrino Palawish, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under

your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the sixth day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.]

SOUTHARD HOFFMAN,
Clerk of the Circuit Court of the United States
for the Northern District of California,
By W. B. BRAIZLEY,
Deputy Clerk.

The foregoing writ of error is hereby allowed; and the same having been directed to be taken by the Department of Justice of the United States, and the defendant in error having waived in writing all bond and consented that writ of error may operate as a supersedeas,

It is hereby ordered that no bond be required for the prosecution of said writ, and that the same operate as a supersedeas.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

1 (Indorsed:) L. A., 489. In the Supreme Court of the United States. Jesus Quevas, etc., et al., plaintiffs in error, v. J. Downey Harvey, administrator, etc., defendants in error. (Original.) Writ of error and supersedeas. Filed Nov. 6, 1899. Geo. W. Root, clerk, by A. W. Johnson, deputy.

2 In the supreme court of the State of California, from the superior court of San Diego County, Torrence, judge.

J. DOWNEY HARVEY, ADMINISTRATOR OF THE estate of John G Downey, deceased, plaintiff and respondent,
vs.
JOSE QUEVAS ET AL., DEFENDANTS AND appellants.
} L. A., No. 489.

Transcript on appeal.

WHITE & MONROE.
Attorneys for Plaintiff and Respondent.
SHIRLEY C. WARD &
FRANK D. LEWIS,
Attorneys for Defendants and Appellants.

Filed December 3rd, 1897.

T. H. WARD, *Clerk,*
By F. C. WOODBURY, *Deputy.*

3 In the superior court of the county of San Diego, State of California.

J. DOWNEY HARVEY, ADMINISTRATOR OF THE ESTATE of John G. Downey, deceased, plaintiff,

vs.

JOSÉ QUEVAS, RUFINA QUEVAS, MARCIA QUEVAS, Antonia Quevas, John Doe Quevas, Jane Doe Quevas, Henry Roe Quevas, James Doe Quevas, Mary Doe Quevas, Jacobo Juan, José Juan, Jacobo, Jacobo Doe, John Doe Feliz, James Doe Feliz, Feliz Doe, Feliz Roe, John Doe Dolores, Dolores Doe, Dolores, Feliz, Feliz, Patricio Doe, John Doe Patricio, Patricio, John Doe Sanone, Sanone, Sanone Doe, Sanone Roe, Sanone, Suturnino Chapo, Rosa Chapo, Cenon Chapo, José La Luz, Patricio Qusjo, Benea Chapo, Rufina Cuevo, Antonia Cuevo, José Cuevo, Dolores Cuevo, Angel Quilpe, Maria Quilpe, Feliz Wichonla, Maria Antonia Wichonla, Jusefa Wichonla, Domingo Palawish, Madalena Palawish, Acovo Palawish, Maria Los Angeles Palawish, Matilda Palawish, José Dolores Palawish, Manuel Palawish, José Juan Palawish, Sebastian Palawish, Maria Jesus Colol, Palegrino Palawish, John Green, James Green, Mary Green, Sarah Green, John Black, and James Black, defendants.

Amended complaint.

Now comes the plaintiff, and for cause of action against the defendants alleges:

4 I.

That all the defendants above named are Indians and half-breed Indians, and that the defendants, José Quevas, Rufina Quevas, Marcia Quevas, Antonia Quevas, Jacobo Juan, José Juan, Jacobo, Feliz, Feliz, Dolores, Sanone, Patricio, Sanone, Saturnino Chapo, Rosa Chapo, Cenon Chapo, José La Luz, Patricio Qusjo, Benea Chapo, Rufina Cuevo, Antonia Cuevo, José Cuevo, Dolores Cuevo, Angel Quilpe, Maria Quilpe, Feliz Wichonla, Maria Antonia Wichonla, Jusefa Wichonla, Dominga Palawish, Madalena Palawish, Acovo Palawish, Maria Los Angeles Palawish, Matilda Palawish, José Dolores Palawish, Manual Palawish, José Juan Palawish, Sebastian Palawish, Maria Jesus Colol, Palegrino Palawish, are respectively known by the names in this paragraph hereinbefore stated; that the true names of all the other defendants herein are unknown to plaintiff, and they are therefore designated by fictitious names in the caption hereof; and plaintiff prays that when their true names are discovered that the same may be herein inserted instead of said fictitious names.

II.

That the above-named plaintiff is the owner in fee simple of all that tract of land situate in the county of San Diego, State of California, and

more particularly described as follows, to wit: The rancho Valle de San José, being lot number 40, township 11 south, range 2 east; lot number 40, township 11 south, range 3 east; and lot number 37, township 11 south, range 4 east; all of the San Bernardino base and meridian, and being the same land described in the patent of the United States to Silvestre de la Portilla, dated January 10, 1880, and recorded in the office of the county recorder of San Diego County on February 20, 1880, in book 2 of patents at page 84 and following; said lands including 17,624.6 acres more or less.

5

III.

The above-named defendants are in the possession of portions of said tracts of land, and that they and each of them claim an interest or estate therein adverse to the plaintiff; but the plaintiff avers that the claims of said defendants and each of them are without any right whatever, and that the defendants have not, nor has either of them, any estate, right, title, or interest whatever in or to said land or premises or any part thereof.

IV.

That the plaintiff in this action asserts and claims and has ownership in fee simple as aforesaid to the lands and premises described herein, under and by virtue of a patent issued to his predecessors in interest on January 10, 1880, by the United States of America, which said patent was so issued pursuant to the provisions of an act of the Congress of the United States, approved March 3rd, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and was founded upon a grant of the Mexican Government. The plaintiff's said claim and right to said land are protected and asserted under the laws of the United States and the stipulations and obligations of the treaty of Guadalupe Hidalgo entered into by the Government of the United States and the Government of Mexico.

V.

That on the 1st day of March, 1894, at the city of Los Angeles, county of Los Angeles, State of California, the said John G. Downey died intestate; that on the 17th day of March, 1894, letters of administration upon the estate of said John G. Downey were issued by the superior court of the county of Los Angeles in this State, to the plaintiff; that said plaintiff thereupon duly qualified as such administrator and entered upon the discharge of the duties of his said office, and that said letters of administration have not been revoked.

6

Wherefore plaintiff prays:

First. That said defendants and each of them may be required to set forth the nature of their respective claims to said lands, and that all adverse claims of said defendants thereto may be determined by a decree of this court.

Second. That by said decree it be declared and adjudged that the plaintiff is the owner in fee of said lands and premises, and every part thereof, and that his title thereto is good and valid, and that the defendants have

not, nor has either of them, any estate or interest therein, and that they and each of them be forever enjoined and debarred from asserting any claim whatever in or to said premises, or any part thereof, adverse to the plaintiff.

Third. That the plaintiff may have a writ for the possession of said premises as against the said defendants and each of them, and for such other and further relief as to this honorable court may seem meet and agreeable to equity, and for costs.

WHITE & MONROE,
Attorneys for Plaintiff.

Duly verified.

(Endorsed:) Filed September 11th, 1894.

[Title of court and cause.]

Answer.

Come now Jesus Quevas, sometimes called Jesus Cuevo, and named in complaint herein as Henry Roe Quevas; José Quevas, sometimes called José Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; José Maria Quilpe, named in complaint as John Green; Francisca Quilpe, named in complaint as Mary Green; Maria Quilpe; Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Cuevo; Antonia
7 Quevas, sometimes called Antonia Cuevo; Maria Nacho, named in complaint herein as Sarah Green; and Angel Quilpe, sued and served with summons herein, either by their true names or by fictitious names, and for themselves and not for their codefendants, and for answer to the complaint of plaintiff filed herein, state:

I.

That they have no knowledge, information, or belief upon the subject sufficient to enable them to answer the allegation of the complaint that plaintiff is the owner in fee simple of all that tract of land described in Paragraph II of the complaint, and upon that ground they deny that plaintiff is the owner in fee simple, or at all, of the lands and premises described in Paragraph II of the complaint or of any part thereof.

II.

They admit that these defendants are in possession of portions of said tract of land described in Paragraph II of said complaint, and admit that each of them claims an interest and estate therein adverse to plaintiff; but they deny that their claim, or that the claim of any of them, is without right, and deny that they or any of them have no estate, right, title, or interest whatever in or to said lands or premises or any part thereof.

III.

That they have no knowledge, information, or belief upon the subject sufficient to enable them to answer the allegation of the complaint that

plaintiff asserts and claims and has ownership in fee simple to the lands and premises described in Paragraph II of plaintiff's complaint, under and by virtue of a patent issued to his predecessors in interest by the United States of America, or that plaintiff's said claim and right to said land are protected and asserted under the laws of the United States
8 and the stipulations and obligations of the treaty of Guadalupe Hidalgo, and upon that ground they deny that plaintiff has ownership in fee simple to said lands and premises or to any part thereof, under or by virtue of a patent issued to his predecessors in interest on January 10th, 1880, by the United States of America, or at all, and deny that said patent was issued in pursuance to the provisions of an act of Congress of the United States, approved March 3rd, 1851, or at all, and deny that said patent was founded upon the grant of the Mexican Government, and deny that plaintiff's said claim and right to said land are protected and asserted under the laws of the United States and the stipulations and obligations of the treaty of Guadalupe Hidalgo.

IV.

That they have no knowledge, information, or belief upon the subject sufficient to enable them to answer the allegation of the complaint that John G. Downey died intestate, and that letters of administration upon the estate of said John G. Downey were issued by the superior court of the county of Los Angeles, in this State, to the plaintiff, and upon that ground they deny that plaintiff is the duly qualified administrator of the estate of John G. Downey, deceased.

As a further and separate answer these defendants allege that they and their ancestors are now and were, at the time of the acquisition by the United States from Mexico of the territory embraced within the State of California, and for many years prior thereto, Mission or Pueblo Indians, known and recognized as such under the laws of Spain, Mexico, and the United States; that at the time of the acquisition from the Mexican Government by the United States of the territory embraced within
9 the present State of California, and for more than thirty years prior thereto, these defendants and their ancestors were in the actual, peaceable, open, notorious, exclusive, and adverse possession, occupancy, and use of the following-described land, to wit:

Beginning at the corner No. 23 of the accepted survey of the Rancho Valle de San José, a willow tree ten inches in diameter, marked P XXIII, in the ravine, from which a sycamore tree five inches in diameter bears south 39½°, east 60 links distant for corner No. 1; thence running north 50¾°, east (variation 13½° east), 19 and 85-100 chains to corner No. 2; thence north 34¾°, west 47 chains to corner No. 3; thence south 46°, west 32 and 40-100 chains to corner No. 4; thence south 50¾°, east 45 chains to point of beginning, containing in all 118 and 69-100 acres, being a portion of the lands and premises described in Par. II of plaintiff's complaint herein.

That at all times herinabove mentioned prior to the acquisition by the United States from Mexico of the territory embraced within the State of California, these defendants and their ancestors occupied and held such possession of said lands under and by virtue of laws and regulations of

the Mexican Government and under claim of right so to do, and were entitled by said laws and regulations to so use, occupy, and possess the same against all other parties whatsoever.

That the rights of these defendants and their ancestors to so occupy, use, and possess said lands were established and guaranteed by virtue of the laws and regulations of the Mexican Government in effect at all times herein mentioned prior to the acquisition by the United States from Mexico of the territory now embraced within the State of California.

That these defendants, together with their ancestors, at all times
10 since the acquisition by the United States from Mexico of the territory now embraced within the State of California have been and remain in the continuous, open, notorious, actual, peaceable, exclusive, and adverse possession, occupancy, and use of all said lands as against all the world and have acquired and now hold all the right, title, and interest so held and possessed by themselves and their ancestors, as aforesaid, prior to the acquisition by the United States from Mexico of such territory.

That in and by virtue of the treaty known as the "Treaty of Guadalupe Hidalgo," between the United States and the Mexican Republic, and by virtue of the general law of nations, the United States recognized and stipulated to protect the rights and title of these defendants to the use, occupancy, and possession of said lands in the same manner as they and their ancestors had, under and by virtue of the Mexican laws and regulations, been entitled to possess and occupy the same.

That these defendants are now in equity the owners and against all the world are entitled to the possession, occupancy, and use of the said lands.

VI.

That at the date of the grant or pretended grant by the Mexican Government, under which plaintiff claims title to said lands and premises, they were occupied, possessed, and claimed by these defendants, their ancestors and predecessors, and that said lands were not vacant and unoccupied lands at such time, subject to private grant under the laws of Mexico.

That the said grant or pretended grant was made subject to and in subordination to the rights of these defendants, their ancestors and predecessors, as aforesaid, to use, occupy, and possess said lands, and not otherwise.

11

VII.

That by the confirmation of the grant under which plaintiff claims and the issuing of the patent therefor, the Government of the United States did not purport to give or to grant and has not given or granted any other or different title from that granted by the Mexican Government, to wit, a grant subject to and in subordination to the rights of these defendants, their ancestors and predecessors, to the lands and premises aforesaid, as hereinbefore stated, but that nevertheless said patent on its face purports to convey said lands and premises absolutely and without regard to the rights and claims of the defendants and without being subject or subordinate to their said rights or claims, as hereinbefore stated.

The said patent is a cloud upon the title of these defendants, as aforesaid, to said land and premises.

Wherefore, these defendants pray that the plaintiff take nothing by this action, and that these defendants have judgment that their right to the occupancy, use, and possession of said land and premises be decreed to be prior and paramount to the said title of the plaintiff, and that said patent be decreed to be subject and subordinate to their right to use, occupy, and possess said lands exclusively for their own use and benefit; and that they have such other and further relief as may be meet and proper, together with their costs in this behalf expended.

Come now José Dolores Palawish, sometimes called José Dolores, José Feliz, sometimes called Feliz Wichonla, Madelina Palawish, Matilda Quevas, sometimes called Matilda Palawish, Jacobo Palawish, sometimes called Acovo Palawish, José Juan, sometimes called José Juan Palawish, Jacobo Dominga Palawish, Maria Antonia Guachona, sometimes called Maria Antonio Wichonla, Maria Jesus Colol, Sebastian Palawish,
12 Josefa Guachona, sometimes called Josefa Wichonla, Maria Los Angeles Palawish, Manuel Palawish, and Pelegrino Palawish, sued and served with summons herein, either by their true names or by fictitious names, and for themselves and not for their codefendants, and for answer to the complaint of plaintiff filed herein, state:

I.

That they have no knowledge, information, or belief upon the subject sufficient to enable them to answer the allegations of the complaint that plaintiff is the owner in fee simple of all that tract of land described in paragraph II of the complaint, and upon that ground they deny that plaintiff is the owner in fee simple, or at all, of the lands and premises described in paragraph II of the complaint, or of any part thereof.

II.

They admit that these defendants are in possession of portions of said tract of land described in paragraph II of said complaint, and admit that each of them claims an interest and estate therein adverse to plaintiff, but they deny that their claim, or that the claim of any of them, is without right, and deny that they or any of them have no estate, right, title, or interest whatever, in or to said lands or premises or any part thereof.

III.

That they have no knowledge, information, or belief upon the subject sufficient to enable them to answer the allegation of the complaint that plaintiff asserts and claims and has ownership in fee simple to the lands and premises described in paragraph II of plaintiff's complaint, under and by virtue of a patent issued to his predecessors in interest by the United States of America, or that plaintiff's said claim and right to said land are protected and asserted under the laws of the United
13 States and the stipulations and obligations of the treaty of Guadalupe Hidalgo, and upon that ground they deny that plaintiff has

ownership in fee simple to said lands and premises, under or by virtue of a patent issued to his predecessors in interest on January 10th, 1880, by the United States of America, or at all, and deny that said patent was issued in pursuance to the provisions of an act of Congress of the United States, approved March 3rd, 1851, or at all, and deny that said patent was founded upon the grant of the Mexican Government, and that plaintiff's said claim and right to said land are protected and asserted under the laws of the United States and the stipulations and obligations of the treaty of Guadalupe Hidalgo.

IV.

That they have no knowledge, information, or belief, upon the subject sufficient to enable them to answer the allegation of the complaint that John G. Downey died intestate, and that letters of administration upon the estate of said John G. Downey were issued by the superior court of the county of Los Angeles, in this state, to the plaintiff, and upon that ground they deny that plaintiff is the duly qualified administrator of the estate of John G. Downey, deceased.

V.

As a further and separate answer, these defendants allege that they and their ancestors are now and were, at the time of the acquisition by the United States from Mexico of the territory embraced within the State of California, and for many years prior thereto, Mission, or Pueblo Indians, known and recognized as such under the laws of Spain, Mexico, and the United States; that at the time of the acquisition from the Mexican Government by the United States of the territory embraced within the present State of California, and for more than thirty
14 years prior thereto, these defendants and their ancestors were in the actual, peaceable, open, notorious, exclusive, and adverse possession, occupancy, and use of the following described land, to wit:

Beginning at corner No. 5 of the accepted survey of Valle de San José, an oak tree 23 inches in diameter, from which a black-oak tree 17 inches in diameter bears north 75½° east 75 links distant for corner No. 1; thence south 52¼° east (variation 13½° east) 46 and 75-100 chains to corner No. 2; thence north 43° east 15 and 15-100 chains to corner No. 3; thence north 52¼° west 46 and 75-100 chains to corner No. 4; thence south 43° west 15 and 15-100 chains to the point of beginning, containing in all 70 and 54-100 acres, being a portion of the lands and premises described in paragraph II of plaintiff's complaint herein.

That at all times hereinabove mentioned prior to the acquisition by the United States from Mexico of the territory embraced within the State of California, these defendants and their ancestors occupied and held such possession of said lands under and by virtue of the laws and regulations of the Mexican Government, and under claim of right so to do; and were entitled by said laws and regulations to so use, occupy and possess the same against all other parties whatsoever;

That the rights of these defendants and their ancestors to so occupy, use, and possess said lands were established and guaranteed by virtue

of the laws and regulations of the Mexican Government in effect at all times herein mentioned prior to the acquisition by the United States from Mexico of the territory now embraced within the State of California;

That these defendants, together with their ancestors, at all times since the acquisition by the United States from Mexico of the territory
15 now embraced within the State of California, have been and remain in the continuous, open, notorious, actual, peaceable, exclusive, and adverse possession, occupancy, and use of all said lands as against all the world, and have acquired, and now hold, all the right, title, and interest, so held and possessed by themselves and their ancestors, as aforesaid, prior to the acquisition by the United States from Mexico of such territory;

That in and by virtue of the treaty known as the "treaty of Guadalupe Hidalgo," between the United States and the Mexican Republic, and by virtue of the general law of nations, the United States recognized and stipulated to protect the rights and title of these defendants to the use, occupancy, and possession of said lands in the same manner as they and their ancestors had, under and by virtue of the Mexican laws and regulations, been entitled to possess and occupy the same.

That these defendants are now in equity the owners and against all the world are entitled to the possession, occupancy, and use of the said lands.

VI.

That at the date of the grant or pretended grant by the Mexican Government, under which plaintiff claims title to said lands and premises, they were occupied, possessed, and claimed by these defendants, their ancestors and predecessors, and that said lands were not vacant and unoccupied lands at such time, subject to private grant under the laws of Mexico.

That the said grant or pretended grant was made subject to and in subordination to the rights of these defendants, their ancestors, and predecessors, as aforesaid, to use, occupy, and possess said lands, and not otherwise.

VII.

That by the confirmation of the grant under which plaintiff
16 claims and the issuing of the patent therefor, the Government of the United States did not purport to give or to grant and has not given or granted any other or different title from that granted by the Mexican Government, to wit, a grant subject to and in subordination to the rights of these defendants, their ancestors and predecessors, to the lands and premises aforesaid, as hereinbefore stated, but that nevertheless said patent on its face purports to convey said lands and premises absolutely and without regard to the rights and claims of the defendants and without being subject or subordinate to their said rights or claims, as hereinbefore stated. The said patent is a cloud upon the title of these defendants, as aforesaid, to said land and premises.

Wherefore, these defendants pray that the plaintiff take nothing by this action, and that these defendants have judgment that their right to

the occupancy, use, and possession of said land and premises be decreed to be prior and paramount to the said title of the plaintiff; and that said patent be decreed to be subject and subordinate to their right to use, occupy, and possess said lands exclusively for their own use and benefit; and that they have such other and further relief as may be meet and proper, together with their costs in this behalf expended.

Come now José La Luz, Saturnino Chapo, Julian Chapo, named in complaint herein as John Black; Concession Chapo, named in complaint herein as Jane Doe Quevas; Juan Quaja, named in complaint herein as John Doe Quevas; Patricio Quaja, named in complaint herein as Patricio Qusjo; Susana Quaja, named in complaint herein as Mary Doe Quevas; Maria Antonia Sobermuta, Sanone, Matilda Osun, named in complaint herein as Dolores Doe; Cenon Chapo, Benea Chapo, Louisa Chapo, named in complaint herein as Sanone Doe; Maria Guachona,
17 Maria Antonia Guachona, and Rosa Guachona, sometimes called Rosa Chapo, sued and served with summons herein, either by their true names or by fictitious names, and for themselves and not for their codefendants, and for answer to the complaint of plaintiff filed herein, state:

I.

That they have no knowledge, information, or belief upon the subject sufficient to enable them to answer the allegations of the complaint that plaintiff is the owner in fee simple of all that tract of land described in Paragraph II of the complaint, and upon that ground they deny that plaintiff is the owner in fee simple, or at all, of the lands and premises described in Paragraph II of the complaint, or of any part thereof.

II.

They admit that these defendants are in possession of portions of said tract of land described in Paragraph II of said complaint, and admit that each of them claims an interest and estate therein adverse to plaintiff, but they deny that their claim, or that the claim of any of them, is without right, and deny that they or any of them have no estate, right, title, or interest whatever in or to said lands or premises, or any part thereof.

III.

That they have no knowledge, information, or belief upon the subject sufficient to enable them to answer the allegation of the complaint that plaintiff asserts and claims and has ownership in fee simple to the lands and premises described in Paragraph II of plaintiff's complaint, under and by virtue of a patent issued to his predecessors in interest by the United States of America, or that plaintiff's said claim and right to said land are protected and asserted under the laws of the United States
18 and the stipulations and obligations of the treaty of Guadalupe Hidalgo, and upon that ground they deny that plaintiff has ownership in fee simple to said lands and premises, under or by virtue of a patent issued to his predecessors in interest on January 10th, 1880, by

the United States of America, or at all, and deny that said patent was issued in pursuance to the provisions of an act of Congress of the United States, approved March 3rd, 1851, or at all, and deny that said patent was founded upon the grant of the Mexican Government, and deny that plaintiff's said claim and right to said land are protected and asserted under the laws of the United States and the stipulations and obligations of the treaty of Guadalupe Hidalgo.

IV.

That they have no knowledge, information, or belief upon the subject sufficient to enable them to answer the allegation of the complaint that John G. Downey died intestate, and that letters of administration upon the estate of said John G. Downey were issued by the superior court of the county of Los Angeles, in this State, to the plaintiff, and upon that ground they deny that plaintiff is the duly qualified administrator of the estate of John G. Downey, deceased.

V.

As a further and separate answer, these defendants allege that they and their ancestors are now and were at the time of the acquisition by the United States from Mexico of the territory embraced within the State of California, and for many years prior thereto, Mission or Pueblo Indians, known and recognized as such under the laws of Spain, Mexico, and the United States. That at the time of the acquisition from the Mexican Government by the United States of the territory embraced within the present State of California, and for more than thirty
19 years prior thereto, these defendants and their ancestors were in the actual, peaceable, open, notorious, exclusive, and adverse possession, occupancy, and use of the following-described land, to wit:

Beginning at corner No. 3 of the accepted survey of the Rancho Valle de San José, it being a willow tree 50 inches in diameter, marked P III; thence running south, 55½° east (variation 13¼° east), 39 and 39-100 chains; thence north, 8½° east, 9 and 85-100 chains; thence north, 42½° west, 19 and 50-100 chains; thence north, 77° west, 15 and 71-100 chains; thence south, 46° west, 7 and 24-100 chains to point of beginning, containing in all 37 and 89-100 acres, being a portion of the lands and premises described in paragraph II of plaintiff's complaint herein.

That at all times hereinabove mentioned, prior to the acquisition by the United States from Mexico of the territory embraced within the State of California, these defendants and their ancestors occupied and held such possession of said lands under and by virtue of the laws and regulations of the Mexican Government and under claim of right so to do, and were entitled by said laws and regulations to so use, occupy, and possess the same against all other parties whatsoever.

That the rights of these defendants and their ancestors to so occupy, use, and possess said lands were established and guaranteed by virtue of the laws and regulations of the Mexican Government in effect at all times herein mentioned prior to the acquisition by the United States from Mexico of the territory now embraced within the State of California.

That these defendants, together with their ancestors, at all times since the acquisition by the United States from Mexico of the territory now embraced within the State of California, have been and remain in the continuous, open, notorious, actual, peaceable, exclusive, and
20 adverse possession, occupancy, and use of all said lands as against all the world, and have acquired and now hold all the right, title, and interest so held and possessed by themselves and their ancestors, as aforesaid, prior to the acquisition by the United States from Mexico of such territory.

That in and by virtue of the treaty known as the "Treaty of Guadalupe Hidalgo" between the United States and the Mexican Republic, and by virtue of the general law of nations, the United States recognized and stipulated to protect the rights and title of these defendants to the use, occupancy, and possession of said lands in the same manner as they and their ancestors had under and by virtue of the Mexican laws and regulations been entitled to possess and occupy the same.

That these defendants are now in equity the owners, and against all the world are entitled to the possession, occupancy, and use of the said lands.

VI.

That at the date of the grant or pretended grant by the Mexican Government, under which plaintiff claims title to said lands and premises, they were occupied, possessed, and claimed by these defendants, their ancestors and predecessors, and that said lands were not vacant and unoccupied lands at such time subject to private grant under the laws of Mexico.

That the said grant or pretended grant was made subject to and in subordination to the rights of these defendants, their ancestors and predecessors, as aforesaid, to use, occupy, and possess said lands, and not otherwise.

VII.

That by the confirmation of the grant under which plaintiff claims, and the issuing of the patent therefor, the Government of the United States did not purport to give or to grant and has not given or
21 granted any other or different title from that granted by the Mexican Government, to wit, a grant subject to and in subordination to the rights of these defendants, their ancestors and predecessors, to the lands and premises aforesaid, as hereinbefore stated, but that nevertheless said patent on its face purports to convey said lands and premises absolutely and without regard to the rights and claims of the defendants and without being subject or subordinate to their said rights or claims, as hereinbefore stated. The said patent is a cloud upon the title of these defendants, as aforesaid, to said land and premises.

Wherefore, these defendants pray that the plaintiff take nothing by this action, and that these defendants have judgment that their right to the occupancy, use, and possession of said land and premises be decreed to be prior and paramount to the said title of the plaintiff, and that said patent be decreed to be subject and subordinate to their right to use, occupy, and possess said lands exclusively for their own use and benefit.

and that they have such other and further relief as may be meet and proper, together with their costs in this behalf expended.

SHIRLEY C. WARD &
FRANK D. LEWIS,
Spe. U. S. Atty. for Mission Indians,
Attorneys for Defendants Herein Appearing.

Duly verified.
(Endorsed:) Filed Oct. 1st, 1895.

[Title of court and cause.]

Findings.

This cause having been called regularly for trial before the court on the 14th day of November, 1896, and a jury trial having then been expressly and duly waived by the respective parties, Messrs.
22 White & Monroe appearing as attorneys for plaintiff, and Shirley C. Ward and Frank D. Lewis, esqs., appearing as attorneys for defendants, Jesus Quevas, sometimes called Jesus Cuevo, and named in the complaint herein as Henry Roe Quevas, José Quevas, sometimes called José Cuevo, Antonio Quevas, sometimes called Antonio Cuevo, José Maria Quilpe, named in complaint as John Green, Francisca Quilpe, named in complaint as Mary Green, Maria Quilpe, Dolores Quevas, sometimes called Dolores Cuevo, Rufina Quevas, sometimes called Rufina Cuevo, Marcia Quevas, sometimes called Marcia Cuevo, Antonio Quevas, sometimes called Antonio Cuevo, Maria Nacho, named in complaint herein as Sarah Green, Angel Quilpe, José Dolores Palawish, sometimes called José Dolores, José Feliz, sometimes called Feliz Wichonla, Madalena Palawish, Matilda Quevas, sometimes called Matilda Palawish, Jacobo Palawish, sometimes called Acovo Palawish, José Juan, sometimes called José Juan Palawish, Jacobo Dominga Palawish, Maria Antonia Guachona, sometimes called Maria Antonia Wichonla, Maria Jesus Colol, Sebastian Palawish, Josefa Palawish, sometimes called Josefa Guachona, and sometimes called Josefa Wichonla, Maria Los Angeles Palawish, Manuel Palawish, Pelegrino Palawish, José La Luz, Saturnino Chapo, Julian Chapo, named in complaint herein as John Black, Concession Chapo, named in complaint herein as Jane Doe Quevas, Juan Quaja, named in complaint herein as John Doe Quevas, Patricio Quaja, named in complaint herein as Patricio Qusjo, Susana Quaja, named in complaint herein as Mary Doe Quevas, Maria Antonia Sobermuta, named in complaint herein as Dolores Sanone, Matilda Osun, named in complaint herein as Dolores Doe, Cenon Chapo, Benca Chapo, Louisa Chapo, named in complaint herein as Sanone Doe, Maria Guachona, named in complaint herein as Sanone Roe, Maria Antonia
23 Guachona, named in complaint herein as Feliz, and Rosa Guachona, sometimes called Rosa Chapo, and also known as Rosa La Powat; and thereupon plaintiff dismissed this action as to all the defendants other than those last above named, and the court having heard the proofs of the respective parties, and considered the same, and the records and papers in the case, and the arguments of the respective attorneys therein, and the cause having been submitted to the court for

its decision, and by the court taken under advisement, the court now finds the following facts:

I.

That all of the said defendants last above named are Indians and half-breed Indians.

II.

That the plaintiff is the owner in fee simple of all of that tract of land situated in the county of San Diego, State of California, and more particularly described as follows, to wit:

The rancho Valle de San José, being lot number 40, township 11 south, range 2 east; lot number 40, township 11 south, range 3 east; and lot number 37, township 11 south, range 4 east; all of the San Bernardino base and meridian, and being the same land described in the patent of the United States to Silvestre de la Portilla, dated January 10, 1880, and recorded in the office of the county recorder of San Diego County, on February 20, 1880, in book 2 of patents at page 84 and following; said lands including 17,624.6 acres more or less.

III.

That the defendants last above named are in possession of portions of said tracts of land, and they, and each of them, claim an interest or estate therein adverse to the plaintiff, but that the claims of the defendants, and each of them, are without right, title or interest whatever in or to said land or premises, or any part thereof.

24

IV.

That the plaintiff has ownership in fee simple to the lands and premises described herein under and by virtue of said patent issued to his predecessor in interest, Silvestre de la Portilla, on January 10, 1880, by the United States of America, which said patent was so issued pursuant to the provisions of an act of the Congress of the United States, approved March 3, 1851, entitled: "An act to ascertain and settle the private land claims in the State of California," and was founded upon a grant of the Mexican Government; and the plaintiff's said ownership is protected and asserted under the laws of the United States, and the stipulations and obligations of the treaty of Guadalupe Hidalgo, entered into by the Government of the United States and the Government of Mexico; and the plaintiff has succeeded by mesne conveyances to the interest of the patentee in said patent.

V.

That on the 1st day of March, 1894, at the city of Los Angeles, State of California, said John G. Downey died; and that on the 17th day of March, 1894, letters of administration upon the estate of John G. Downey were issued by the superior court of the County of Los Angeles, in this State, to the plaintiff, and that said plaintiff thereupon duly qualified as such administrator, and entered upon the discharge of his said

office, and so continued until the 26th day of July, 1895, when a will of said John G. Downey having been discovered, the said plaintiff was, by said superior court of Los Angeles County, State of California, duly appointed administrator with the will annexed of the estate of John G. Downey, deceased, and that he thereupon duly qualified as such administrator with the will annexed, and entered upon the discharge of his said office, and that said letters of administration with the will annexed have not been revoked.

VI.

25 That said John G. Downey in his lifetime and up to the time of his death was the owner in fee simple of all the lands herein described, and that during his lifetime he paid all the taxes of every kind that were levied or assessed upon any or all of said lands from the issuing of the patent until his death, and that since his death all taxes of every kind that have been levied or assessed upon said lands have been paid by the plaintiff herein, and that the defendants have not, nor has either of them, paid any taxes on said lands or any part thereof.

VII.

That the following defendants, to wit, Jesus Quevas, sometimes called Jesus Cuevo and named in complaint herein as Henry Roe Quevas, José Quevas, sometimes called José Cuevo, Antonio Quevas, sometimes called Antonio Cuevo, José Maria Quilpe, named in complaint as John Green, Francisca Quilpe, named in complaint as Mary Green, Maria Quilpe, Dolores Quevas, sometimes called Dolores Cuevo, Rufina Quevas, sometimes called Rufina Cuevo, Marcia Quevas, sometimes called Marcia Cuevo, Antonia Quevas, sometimes called Antonia Cuevo, Maria Nacho, named in complaint herein as Sarah Green and Angel Quilpe were not, nor was either of them, nor were the ancestors or ancestor of either of them at the time of the acquisition from the Mexican Government by the United States of the territory embraced within the State of California, and for more than thirty years prior thereto, or at all, recognized as Mission or Pueblo Indians under the laws of Spain, Mexico, and the United States, and were not in the adverse possession, occupancy, or use of the following described land, to wit:

Beginning at the corner No. 23 of the accepted survey of the rancho Valle de San José, a willow tree ten inches in diameter, 26 marked P XXIII in the ravine, from which a sycamore tree five inches in diameter bears south 39½° east 60 links distant for corner No. 1; thence running north 50¾° east (variation 13½° east) 19.85 chains to corner No. 2; thence north 34¾° west 47 chains to corner No. 3; thence south 46° west 32.40 chains to corner No. 4; thence south 50¾° east 45 chains to point of beginning, containing in all 118.69 acres, being a portion of the lands and premises described in par. II of plaintiff's complaint herein, and first herein described, or of any portion of said land, and first herein described, and have never since that time been in the adverse possession, occupancy, or use of any or all of said land as against all the world, and have never acquired and do not now hold or

have any right, title, or interest in said lands, or any part thereof; that they are not, nor is either of them, in equity or otherwise, the owner or owners, or entitled to the possession, occupancy, or use of said lands or any of them, but that the plaintiff is entitled to the immediate possession of all of said lands.

VIII.

That the grant by the Mexican Government to the predecessors of the plaintiff of the lands herein described was not made subject to, or in subordination to the rights of said defendants, their ancestors or predecessors, or any of them, and no claim of any of said defendants, their ancestors or predecessors, to any of said land was ever presented to the board of land commissioners of the State of California, as required by act of Congress.

IX.

That the following defendants, to wit, José Dolores Palawish, sometimes called José Dolores, José Feliz, sometimes called Feliz Wichonla, Madalena Palawish, Matilda Quevas, sometimes called Matilda Palawish, Jacobo Palawish, sometimes called Acovo Palawish, José
27 Juan, sometimes called José Juan Palawish, Jacobo Dominga Palawish, Maria Antonia Guachona, sometimes called Maria Antonia Wichonla, Maria Jesus Colol, Sebastian Palawish, Josefa Palawish, sometimes called Josefa Guachona and sometimes called Josefa Wichonla, Maria Los Angeles Palawish, Manuel Palawish, and Pelegrino Palawish were not, nor was either of them, at the time of the acquisition from the Mexican Government by the United States of the territory embraced within the State of California, and for more than thirty years prior thereto, or at all, recognized as Mission or Pueblo Indians by the laws of Spain, Mexico, and the United States, and were not in the adverse possession, occupancy, or use of the following-described land, to wit:

Beginning at corner No. 5 of the accepted survey of Valle de San José, an oak tree 23 inches in diameter from which a black-oak tree 17 inches in diameter bears north 75½° east 75 links distant for corner No. 1; thence south 52¼° east (variation 13½° east) 46 and 75-100 chains to corner No. 2; thence north 43° east 15 and 15-100 chains to corner No. 3; thence north 52¼° west 46 and 75-100 chains to corner No. 4; thence south 43° west 15 and 15-100 chains to the point of beginning, containing in all 70 and 54-100 acres, being a portion of the lands and premises described in paragraph II of plaintiff's complaint herein, and first herein described, or of any portion of said land, and have never since that time been in the adverse possession, occupancy, or use of any or all of said land as against all the world, and have never acquired, and do not now hold, or have any right, title, or interest in said lands, or any part thereof; that they are not, nor is either of them, in equity or otherwise, the owner or owners, or entitled to the possession, occupancy, or
28 use of said lands or any of them, but that the plaintiff is entitled to the immediate possession of all of said lands.

X.

That the grant by the Mexican Government to the predecessors of the plaintiff of the lands herein described was not made subject to or in subordination to the rights of said defendants, their ancestors or predecessors, or any of them, and no claim of any of said defendants, their ancestors or predecessors, to any of said lands was ever presented to the board of land commissioners of the State of California, as required by act of Congress.

XI.

That the following-named defendants, to wit, José La Luz, Saturnino Chapo, Julian Chapo, named in complaint herein as John Black, Concession Chapo, named in complaint herein as Jane Doe Quevas, Juan Quaja, named in complaint herein as John Doe Quevas, Patricio Quaja, named in complaint herein as Patricio Qusjo, Susana Quaja, named in complaint herein as Mary Doe Quevas, Maria Antonia Sobermuta, named in complaint herein as Dolores, Sanone, Matilda Osun, named in complaint herein as Dolores Doe, Cenon Chapo, Benea Chapo, Louisa Chapo, named in complaint herein as *as* Sanone Doe, Maria Guachona, named in complaint herein as Sanone Roe, Maria Antonia Guachona, named in complaint herein as Feliz, and Rosa Guachona, sometimes called Rosa Chapo and also known as Rosa La Powat, were not nor was either of them, nor were the ancestors or ancestor of either of them, at the time of the acquisition from the Mexican Government by the United States of the territory embraced within the State of California, and for more than thirty years prior thereto, or at all, recognized as Mission or Pueblo Indians by the laws of Spain, Mexico, and the United States, and
29 were not in the adverse possession, occupancy, or use of the following described land, to wit:

Beginning at corner No. 3 of the accepted survey of the Rancho Valle de San José, it being a willow tree 50 inches in diameter, marked P III; thence running south 55½° east (variation 13¼° east) 39 and 39-100 chains; thence north 8½° east 9 and 85-100 chains; thence north 42½° west 19 and 50-100 chains; thence north 77° west 15 and 71-100 chains; thence south 46° west 7 and 24-100 chains to point of beginning, containing in all 37 and 89-100 acres, being a portion of the lands and premises described in paragraph II of plaintiff's complaint herein, and first herein described, or of any portion of said land; and have never since that time been in the adverse possession, occupancy, or use of any or all of said land as against all the world, and have never acquired and do not now hold, or have any right, title, or interest in said lands, or any part thereof; that they are not, nor is either of them, in equity or otherwise, the owner or owners or entitled to the possession, occupancy, or use of said lands, or any of them, but that the plaintiff is entitled to the immediate possession of all of said lands.

XII.

That the grant by the Mexican Government to the predecessors of the plaintiff of the lands herein described was not made subject to or in subordination to the rights of said defendants, their ancestors or prede-

cessors, or any of them, and no claim of any of said defendants, their ancestors or predecessors to any of said lands was ever presented to the board of land commissioners of the State of California as required by act of Congress.

XIII.

That none of the defendants or their ancestors, at any time prior to the acquisition by the United States from Mexico of the territory
30 embraced within the State of California, occupied or held any possession of any of the lands described in the complaint or herein described under or by virtue of the laws or regulationsof the Government of Mexico, or under claim of right so to do, and were not entitled by said laws and regulations to so use, occupy, or possess the same against all or any parties whatsoever, and that no right to occupy, use, or possess said lands or any of them by any of said defendants, or their ancestors, was established or guaranteed by the laws or regulations of the Mexican Government at any time.

That the United States did not by the treaty of Guadalupe Hidalgo, or by the general law of nations recognize or stipulate to protect any right or title of the defendants or any of them, to the use, occupancy of possession of any of said lands in any manner whatever.

Plaintiff has title to all of said lands by virtue of the patent herein referred to, and at the date of the grant mentioned in said patent all of said lands were subject to private grant under the laws of Mexico.

By the issuing of said patent and the confirmation of the grant therein mentioned the Government of the United States purported and intended to convey said lands and premises, absolutely without regard to the rights or claims of any of said defendants and without being subject or subordinate to any rights or claims of any of said defendants to any of said lands, and none of said defendants have or ever had any valid claim or right to any of said lands.

Said patent is not a cloud upon any title of any of said defendants.

31 *Conclusions of law.*

As conclusions of law from the foregoing facts the court now hereby finds and decides:

I.

That the plaintiff is the owner in fee simple and entitled to the possession of all the lots, tracts, and parcels of land as the same are described in the complaint on file herein as against the defendants all and severally, and all persons claiming or to claim the same, or any part of said lands under them, the said defendants, or either of them, and that neither one of said defendants has any right, title, or interest in or to said lands or any part thereof.

II.

That the plaintiff is entitled to a decree as prayed for in his complaint to quiet his title to said lands against said defendants and each of them, and all persons claiming or to claim the same or any part thereof under or through said defendants or either of them.

III.

That the plaintiff is entitled to judgment for costs, to be taxed herein against such defendants as answered herein contesting plaintiff's right in said premises.

And judgment is hereby ordered to be entered accordingly.

San Diego, Cal., December 29th, 1896.

W. L. PIERCE,
Superior Judge.

(Endorsed:) Filed Dec. 29, 1896.

32 [Title of court and cause.]

Judgment.

This cause having been regularly called and tried by the court, and the findings of fact and conclusions of law having been duly rendered by the court, which are now on file in this cause, wherein judgment was awarded in favor of J. Downey Harvey, administrator with the will annexed of the estate of John G. Downey, deceased, plaintiff, against all of the defendants, and for costs, on motion of Messrs. White & Monroe, plaintiff's attorneys.

It is now, therefore, ordered, adjudged, and decreed that the plaintiff have judgment as prayed for in his complaint herein against the defendants Jesus Quevas, sometimes called Jesus Cuevo, and named in the complaint herein as Henry Roe Quevas; José Quevas, sometimes called José Cuevo; Antonio Cuevas, sometimes called Antonio Cuevo; José Maria Quilpe, named in the complaint as John Green; Francisca Quilpe, named in complaint as Mary Green; Maria Quilpe; Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Quevo; Antonia Quevas, sometimes called Antonia Cuevo; Maria Nacho, named in complaint herein as Sarah Green; Angel Quilpe; José Dolores Palawish, sometimes called José Dolores; José Feliz, sometimes called Feliz Wichonla; Madalena Palawish; Matilda Quevas, sometimes called Matilda Palawish; Jacobo Palawish, sometimes called Acovo Palawish; José Juan, sometimes called José Juan Palawish; Jacobo Dominga Palawish; Maria Antonia Guachona, sometimes called Maria Antonia Wichonla; Maria Jesus Colol, Sebastian Palawish; Josefa Palawish, sometimes called Josefa Guachona and sometimes called Josefa Wichonla; Maria Los Angeles Palawish, Manuel Palawish, Pelegrino Palawish,
33 José La Luz, Saturnino Chapo; Julian Chapo, named in complaint herein as John Black; Concession Chapo, named in complaint herein as Jane Doe Quevas; Juan Quaja, named in complaint herein as John Doe Quevas; Patricio Quaja, named in complaint herein as Patricio Qusjo; Susana Quaja, named in complaint herein as Mary Doe Quevas; Maria Antonia Sobermuta, named in complaint herein as Dolores Sanone; Matilda Osun, named in complaint herein as Dolores Doe; Cenon Chapo, Benea Chapo; Louisa Chapo, named in complaint herein as Sanone Doe; Maria Guachona, named in complaint herein as Sanone Roe; Maria Antonia Guachona, named in complaint herein as Feliz, and Rosa Guachona, sometimes called Rosa Chapo and also known as Rosa la Powat,

and each and all of them; that all adverse claims of defendants, and each and all of them, and all persons claiming or to claim said premises or any part thereof through or under said defendants, or either of them, are hereby adjudged and decreed to be invalid and groundless and that the plaintiff be, and he is, hereby declared and adjudged to be the true and lawful owner of the lands described in the complaint and hereinafter described, and every part and parcel thereof, and that his title thereto is adjudged to be quieted against all claims, demands, or pretensions of defendants, or either of them, who are hereby perpetually estopped from setting up any claims thereto, or any part thereof.

Said premises are bounded and described as follows:

That tract of land situated in the county of San Diego, State of California, and more particularly described as follows, to wit:

The rancho Valle de San José, being lot number 40, township 11 south, range 2 east; lot number 40, township 11 south, range 3 east, and lot number 37, township 11 south, range 4 east, all of the San Ber-
34 nardino base and meridian, and being the same land described in the patent of the United States to Silvestre de la Portilla, dated January 10, 1880, and recorded in the office of the county recorder of San Diego County on February 20, 1880, in book 2 of patents, at page 84 and following, said lands including 17,624.6 acres, more or less.

And it is further ordered, adjudged, and decreed that the plaintiff do have and recover his costs, hereby taxed at one hundred and six and 10-100 dollars, against the defendants.

San Diego, Cal., December 29, 1896.

W. L. PIERCE, *Superior Judge.*

(Endorsed:) Filed Dec. 29, 1896. Entered in judgment book 16, page 386. Will H. Holcomb, clerk, by W. H. A., deputy.

Duly verified.

[Title of court and cause.]

Statement on appeal.

This cause was submitted to the court upon a stipulation of the parties, filed herein upon the 14th day of November, 1896, such stipulation being as follows:

[Title of court and cause.]

It is hereby stipulated that this case may be submitted upon the depositions taken herein and upon the stipulation as to testimony filed with this stipulation (being the stipulation following this), and upon the record of the United States patent, recorded in book 2, page 85, of patents, San Diego County records, and upon the plaintiff's brief, filed herewith, and upon defendant's brief, to be filed within ten days, and upon the briefs filed by both parties in the case of Harvey v. Barker et al., No. 6919, in this court.

35 It is further stipulated that there is attached to the original "expediente," copy of which is contained in the stipulation herewith filed, a sketch, which is made a part of that "expediente," and that on said sketch, at about the location of the Indian villages of Puerta Nori and San José, there are marks as follows: ∧ ∧ ∧ ∧ , and the word "Rancheria" in each case.

It is also stipulated that Francisco Ruis was a witness in the district court of the United States for the southern district of California, in the case of United States v. Portilla, in which case the grant to Portilla was confirmed; and that he testified that one of the well-known points in the "Valle San José," or Portilla grant, was a "green valley bordering on a road going towards the rancheria called Metajuai."

It is also stipulated that in that case in the district court, there was introduced in evidence the "expediente," which was followed by a translation of the same, and in that translation, in the second condition of the grant, copy of which is contained on page 17 of the stipulation herewith filed, lines 19 to 23 inclusive, the original is translated as follows: "2. He may enclose the said land without injuring the roads and servitudes. He may cultivate it freely, exclusively, etc."

All these stipulations as to facts are made subject to the objection already made to all the oral testimony in the case.

It is further stipulated that at any time within fifteen (15) days from the submission hereof, the defendants may introduce in evidence, subject to the same objection, any portion of the transcript or record in the case of United States v. Portilla, and filed in the office of the clerk of the district court of the United States for the northern district of California, and that the plaintiff, if he so desires, may introduce in evidence
36 a copy, certified by said clerk, of the grant contained on pages 17 and 18 of the stipulation filed herewith in the Spanish language.

SHIRLEY C. WARD &
FRANK D. LEWIS,
Attorneys for Defendants.
WHITE & MONROE,
Attorneys for Plaintiff.

The stipulation as to the testimony referred to in the foregoing stipulation, which was filed at the same time as such stipulation, is as follows:

[Title of court and cause.]

It is hereby stipulated that the ages of the witnesses whose depositions were taken at the Warner ranch, in San Diego County, on the 21st day of August, 1896, are as follows:

Leonardo Aulingawish, 85 years; Cenon Chapo, 75 years; Saturnino Chapo, 80 years; Rosa Chapo, 100 years; Maria Guachona, 95 years; Feliz Wichonla, 80 years; Antonia Quevas, 85 years; Marie Quilpe, 75 years; Dolores Quevas, 75 years.

It is further stipulated that C. W. Gates and Dan Cunningham would testify, if examined in this case, that John G. Downey in his lifetime, from the time he first took possession of Warner's ranch until his death, and since his death his administrator, has occupied and used for grazing cattle all of the lands described in the answer in this case which are not included within the fences, and that all of such land outside of such fences is, and has been during all of said time, destitute of cultivation of any kind, and that this stipulation shall be received as evidence of said facts.

It is further stipulated that E. L. Dorn and Leonardo Aulingawish would testify, if examined as witnesses on the subject, that the live stock
37 of the defendants herein has also used such lands outside of the fences for grazing purposes, during the period above mentioned, in common with the stock of plaintiff.

It is further stipulated that neither the defendants nor their ancestors ever presented their claims for the lands in controversy herein to the board of land commissioners for confirmation, which board of land commissioners was created under and by virtue of the act of Congress of the United States of March 3, 1851, entitled "an act to ascertain and settle the private land claims in the State of California."

It is further stipulated that the lands in controversy are included within the exterior boundaries of a confirmed Mexican grant known as the Valle de San José, for which United States patent issued to the predecessor in interest of John G. Downey, deceased, and of the plaintiff, in the year 1880, a copy of which patent is hereto attached and may be read in evidence. That a copy of the expediente, showing the proceedings of the Mexican Government, regarding said grant is annexed to this stipulation and may be read in evidence as an original.

It is further stipulated that John G. Downey in his lifetime was the owner of all right, title, and interest in and to the lands in controversy that passed by the said patent from the United States, and by the said grant from the Mexican Government, and paid all the taxes of every kind that were levied or assessed upon any and all of said lands from the issue of said patent till his death, and that since his death all taxes of every kind that have been levied or assessed against any and all of said lands have been paid by the plaintiff as the administrator and administrator with the will annexed of the estate of John G. Downey, deceased; and that John G. Downey died in Los Angeles County, State of California, on March 1st, 1894; and that the plaintiff is the administrator
38 with the will annexed of his said estate, duly and regularly appointed by the superior court of Los Angeles County, State of California.

It is further stipulated that E. L. Dorn would testify, if examined as a witness in this case, that under employment of the United States Indian Commission he surveyed the lands described in the answer in this case, in 1891, and that he made such survey from information and directions given him and corners and lines pointed out to him by certain of the old defendants as the true boundaries of their possessions, which defendants are and were at the time of such survey occupying said lands, and that such survey was correctly made, and that the lands so surveyed are correctly described in said answer. That in making such survey, he followed in the main the old fence lines bounding the Indians' cultivation, and whenever he went outside of the fences it was to include property that the Indians claimed to have formerly used, and which showed evidence of ancient Indian occupancy, such as ruins of houses and evidences of long-abandoned cultivation, and that such lands the Indians claimed to have always used for pasturing their horses, and they were actually so using them when the surveys were made.

It is further stipulated that J. J. Warner moved on to the Warner ranch in 1842; that Silvestre Portilla moved on to the land patented to him in 1834; that Ortego moved on to the Santa Ysabel ranch prior to said dates.

It is further stipulated that the name "Mattaguay" is the name by which the Indian settlement is commonly known that is located upon the land first described in the answer herein; that the name "San José" is the name by which the Indians' settlement is commonly known that is

39 located upon the lands last described in the answer herein; that the name "La Puerta" or "Puerta Nori" is the name by which the Indian settlement, located upon the second described tract of land set forth in the answer herein is commonly known.

It is further stipulated that all evidence introduced in the case of Downey v. Barker et al., No. 6919, in this court, may be considered in evidence in this case, so far as the same may be in any way applicable to the property in controversy.

It is further stipulated that this stipulation may be used as evidence of all the facts herein set forth, but it is understood that in making this stipulation neither party waives his right to object at the trial to the competency, materiality, or relevancy of any or all of the facts hereby admitted, or of any of the testimony used in case 6919 above referred to, which it is herein stipulated may be used as evidence in this case.

It is further stipulated that the answer to the complaint herein may be considered as the answer to the amended complaint, and that the said answer may be amended by interlineations as follows:

By adding as new parties Rosa Chapo, also known as Rosa Guachona, also known as Rosa la Powat, and that the name of defendant Josefa Wichonla be changed to Josefa Palawish, wherever said name appears.

WHITE & MONROE,
Attorneys for Plaintiff.
SHIRLEY C. WARD &
FRANK D. LEWIS,
Attorneys for Defendants.

The United States patent in the foregoing stipulation referred to, which is thereunto attached, is in the language following:

The United States of America, to all whom these presents shall come, greeting:

40 Whereas it appears from a duly authenticated transcript, filed in the General Land Office of the United States, that pursuant to the provisions of the act of Congress, approved the third day of March, A. D. one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California," Silvestre de la Portilla, as claimant, filed his petition on the eighth day of November, A. D. one thousand eight hundred and fifty-two, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of Los Angeles, in which petition he claimed the confirmation of his title to "a certain tract of land called the Ville de San José," containing four square leagues, more or less, situate in the then county of San Diego and State aforesaid, said claim being founded on a Mexican grant to the petitioner made on the 16th day of April, A. D. one thousand eight hundred and thirty-six, by Nicholas Gutieviez, then lieutenant-colonel of the regular cavalry, general commandant, inspector, and political chief pro tem. of the territory of California.

And whereas the board of land commissioners aforesaid, on the twenty-first day of February, A. D. one thousand eight hundred and fifty-four, rendered a decree rejecting said claim, which decree or decision having been taken by appeal to the United States district court for the southern district of California, the said district court on the twenty-third day of

February, A. D. one thousand eight hundred and fifty-seven, in the cause entitled "Silvestre de la Portilla, appellant, vs. The United States, appellee," rendered its decree as follows, to wit:

The cause coming on to be heard on appeal from the final decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California, under "an act
41 of Congress approved March 3. 1851," upon a transcript of the proceedings and decision of said board, and of the papers and evidence upon which said decision was founded, and upon additional evidence filed in this court. And it appearing to the court that the said transcript and the notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard.

It is ordered, adjudged, and decreed that the decision of said board of commissioners be, and the same is, in all things reversed.

And it is further adjudged and decreed that the claim of the appellant to the land herein claimed called "Valle de San José," and situated in the county of San Diego, is good and valid, and the same are hereby confirmed to him to the extent of four (4) square leagues and no more within the boundaries called for in the grant, and represented in the map in the expediente filed in the case to which the grant refers, reference for explanation of said map being had to the parol evidence filed in this court.

"Provided that should the quantity of land within said bounds be less than four square leagues, the confirmation is hereby made of such less quantity."

And that thereafter the Supreme Court of the United States at the December term, A. D. one thousand eight hundred and sixty-three, rendered a decree dismissing this cause, as appears by the mandate of said court, which was filed in the United States district court for the southern district of California; whereupon said district court on the tenth day of August, A. D. one thousand eight hundred and sixty-four, in the above-entitled cause, "ordered that the said decree of said court be affirmed, and the said appeal is hereby vacated and dismissed, and that the claim-
ant and appellant be allowed to proceed under said decree of this
42 court as under a final decree," whereby the proceedings of court upon title became final.

And whereas under the thirteenth section of said act of the 3rd of March, A. D. one thousand eight hundred and fifty-one, and the supplemental legislation, and in accordance with the proceedings had pursuant to said act and supplemental legislation, there has been deposited in the General Land Office a return with the descriptive notes and plat of the survey of the said claim, confirmed as aforesaid, authenticated by the signature of the United States surveyor-general for the State of California, which descriptive notes and plat of survey are in the words and figures as follows, to wit:

"U. S. SURVEYOR-GENERAL'S OFFICE,
"*San Francisco, Cal.*

"Under and by virtue of the provisions of the thirteenth section of the act of Congress of the third of March, 1851, entitled 'An act to ascertain and settle the private land claims in the State of California,' and of the twelfth section of the act of Congress approved on the 31st of

August, 1852, entitled 'An act making appropriations for the civil and diplomatic expenses of the Government for the year ending the 30th of June, 1853, and for other purposes;'

"And whereas the U. S. district court for the southern district of California rendered a decision whereby it recognized and confirmed the claim of Silvestre de la Portilla to the tract of land designated as the Rancho 'Ville de San José,' as appears from the certified copy of the final decree of the said district court, a copy of which is hereunto annexed. The said tract of land was surveyed in conformity to the grant thereof and the said decision.

"And I hereby certify that the accompanying map is a
43 true and accurate plat of the said tract of land, as appears by the field notes of the survey thereof, made by William Minto, deputy surveyor, under the direction of this office, which survey having been examined and approved remain of record therein, and are in the words and figures following, to wit:

"Containing 17,634.6 acres, and designated on the official plat of public surveys as lot No. 40 of township 11 south, range 2 east; lot No. 40 of township 11 south, range 3 east; and lot No. 37 of township 11 south, range 4 east, all of the San Bernardino base and meridian.

"In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed in the city of San Francisco, this twentieth day of February, A. D. one thousand eight hundred and seventy-nine.

[SEAL.]

"THEO. WAGNER,
"*U. S. Surveyor-General of California.*"

Here follows the description of the lands described in the complaint herein:

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the provisions of the acts of Congress aforesaid of third March, A. D. one thousand eight hundred and fifty-one, and the legislation supplemental thereto, have given and granted, and by these presents do give and grant, unto the said Silvestre de la Portilla, his heirs and assigns, the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the fifteenth section of the said act, neither the confirmation of this said claim nor the patent shall affect the interests of third persons.

To have and to hold the said tract of land with the appurtenances unto the said Sylvestre de la Portilla, his heirs and assigns, forever, with the stipulation aforesaid.

44 In testimony whereof I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this tenth day of January, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

By the President:

R. B. HAYES.
By W. H. CROOK, *Secretary.*

[SEAL.]

S. W. CLARK,
Recorder of the General Land Office.

Recorded Vol. II, page 189 to 205 inclusive.
Recorded at the request of Wells, Fargo & Co., February 20th, 1880, at 11 o'clock a. m. D. A. Johnson, county recorder, San Diego Co., California.

In pursuance of the first stipulation herein set forth, instead of introducing the full record of the field notes contained in the patent to Portillo, upon an examination of such field notes and map it was stipulated that in the field notes omitted from the above patent none of the Indian villages in question in this case are mentioned by name, but in the description in the second course occurs the following: "At 44 chains an Indian rancheria about 3 chains northeast of the line," and that this reference is to the most southerly of the two western villages.

In course 4 occurs the following: "At 99 chains, an old rancheria, about 14 chains northeast of the line." The description begins at the south corner of the ranch, where it joins the Santa Ysabel ranch.

On the map recorded as a part of the patent these two Indian villages are noted as being within the limits of the grant, a short distance north of the line running from the Santa Ysabel corner to the San Luis
45 Rey River. There is no mention of the Mataguay Indian village in the description, and it is not noted or marked on the map at all.

The expediente showing the proceedings of the Mexican Government, regarding the grant of the "Valle de San José" to Silvestre Portilla, is attached also to such stipulation, but we insert here only the commencement thereof and the formal grant from the Mexican Government contained therein, as the entire expediente is voluminous, and that portion of it omitted has no bearing in one way or the other upon the rights of the parties here. The portion of such expediente relevant is in the language following:

1834. Jurisdiction of San Diego.

"Expediente" on the place named "Valle de San José," petitioned for by Silvestre de la Portilla.

YEAR 1834.

General Brigade, Superior Political Chief of the Territory:

The citizen Silvestre de la Portilla, with all due respect, before you appears and says: That he is a native of the "Vailla del Fuerte," in the State of Sonora, and for the part five years resident of the port of San Diego, under your charge, and possessing some cattle, and having no place on which to place them in safety and to secure their increase, hopes, in your goodness, that you will please to grant him the place called "Valle de San José," which is situated at the entrance to the east road to the Colorado River, and distant from the mission San Diego, about twenty leagues, and from that of San Luis Rey twenty-one leagues, without interfering with other places which have always been vacant; besides said place has a creek and several permenant springs.

The valley is somewhat extensive, and therefore I respectfully pray you to have the goodness to grant me in property the said place
46 "Valle San José" to occupy it immediately with four hundred head of cattle, two drands of gentle mares, and some smaller stock,

and besides to cultivate the lands for his support, for which I will ever be grateful.

SILVESTRE DE LA PORTILLA.

Port of San Diego, February 20, 1834.

PUEBLO LOS ANGELES, *March 16, 1834.*

In conformity with the laws on the matter, the military commander of San Diego will please report whether the party interested in this case possesses the requisites to be attended in his petition, whether the land petitioned for is comprised within the twenty leagues from the land boundary and within the ten leagues from the seashore required by the law of August 18, 1824, whether it depends on rains or can be irrigated, whether it belongs to any private party, corporation, or pueblo, and everything else that may throw light on the matter, ordering that the party interested presents the plans he petitions for, which will be joined to this "expediente."

Having complied with all of this, the "expediente" will be forwarded to the R. R. fathers, ministers of the missions of San Diego and San Luis Rey, that they may report what they think proper.

José Figueroa, general brigade of the United Mexican States, commander superior political chief of Alta California, thus orders, decrees, and signs it, to which I testify.

JOSE FIGUEROA.

In the absence of the secretary.

BERNARDO NARVARRETE.

The party interested in this instance has all the requisites necessary to be attended in his position. The place he petitions for is not comprised within the twenty leagues bounding, nor within the ten littoral leagues. Part of it can be irrigated and others not. It is in the highway on which travel the people from Sonora, and would be useful there such an
47 establishment for their accommodation, for it is some twenty-four leagues inland to the east from this presido, and distant from the San Diego mission, some twenty-two leagues, and some twenty from that of San Luis Rey; and although at some time the mission San Diego had some stock thereon, and on account of its long distance had to take them away, or it was not well attended, as well as from the danger of the part of the wild Indians, who were very numerous there. On this account I am of the opinion that with this establishment there, and using good policy and harmony with them, they will become more friendly and civilized. Wherefore, in view of these facts which I have just exposed, you will decree what you think proper.

SANTIAGO AUGUELLO.

San Diego, April 8th, 1834.

The grant is as follows:

"Nicholas Gutierrez, lieutenant-colonel of stationary cavalry, commander and general inspector and provisional chief of the territory of Alta California.

Whereas the citizen Silvestre de la Portilla, Mexican by birth, has petitioned, for his own personal benefit and that of his family, the land

known by the name "San José," having previously complied with the information and investigation as required by the laws and regulations on the matter, exercising the powers which are conferred on me by decree of this day in the name of the Mexican nation, I have resolved to grant him the said land, declaring it to be his property, by these present letters, subject to the approbation of the most excellent commission and under the conditions following:

1. He shall be subject to the regulations that may be made for the distribution of public lands, and *and* that in the meantime neither the party benefited nor his heirs shall divide nor alienate it, nor bond
48 nor mortgage it, nor place it under any obligation, not even for any pious object, or homestead it.

2. He is allowed to fence it without interfering with the roads, cross-roads, and other usages. He may enjoy it freely and exclusively, turning it to agriculture or any other use he may see proper, but he shall within one year build a house on it, which must be occupied.

3. He shall petition the respective judge to give him judicial possession thereof, by virtue of this order, by which he shall mark out the boundaries, on whose limits he shall place the corner stakes, besides some fruit and wild trees of some utility.

4. The land which is hereby granted consists of (cuatro sitios de genado mayor), in the "Valle de San José," as explained in the plan attached to the "expediente." The judge who should give possession thereof shall have it surveyed according to law, leaving the residue which may be left to the nation for further uses.

If he should fail to comply with these conditions he shall forfeit his right to the land, and it will be denounceable by some other.

Wherefore I command that this presents be his title, and holding as good and valid, record of it to be entered into the proper book and be given to the party interested for his protection and other purposes.

Given in Monterey at the 16th of April, 1836.

CASTILLO."

The depositions referred to in the stipulation for submission of this cause, as having been taken, are the depositions taken of the witnesses on behalf of defendants at Warner's rancho, San Diego County, California, upon the 21st day of August, 1896, in pursuance of the stipulation of counsel.

The witnesses whose depositions were thus taken are as follows, and their ages are stipulated by counsel to be as follows:

49 Leonardo Aulingawash, age 85 years; Cenon Chapo, age 75 years; Saturnino Chapo, age 80 years; Rosa Chapo, age 100 years; Maria Guachona, age 95 years; Feliz Wichonla, age 80 years; Antonio Quevas, age 85 years; Mary Quilpe, age 75 years, and Dolores Cuevas, age 75 years. Such witnesses testified substantially as follows:

That they were all Indian defendants in this case (except Leonardo Aulingawish, who is an Indian living at the Agua Caliente Indian village on Warner's ranch); that they had known the Indian villages on Warner's ranch in San Diego County, known as Mattawai, San José, and La Puerta or Puerta Nori, since they were children, and as far back as they could recollect; that they knew each place long before Silvestre Portilla or Juan Largo (Colonel J. J. Warner), came onto the ranch; that there

were more Indians in those villages in those early times than there are now; that many of the old ones have died off; that the Indians used their lands at such places, in such early times, for sowing wheat, corn, and beans, and other things, and that in those early times the Indians of those villages were under the charge of the mission padres until the missions broke up; that the Indians have continued to live at such places ever since and to use their lands there in the same way; that they (the Indians testifying) have always lived there; that they plant more now than they did then, but the lands they claim outside of their planting fields were then used for pasture, as they are now, but that the stock of Governor Downey, belonging to the ranch, pasture right up to the Indian fences. Cenon Chapo, Feliz Wichonla, and Antonio Quevas identified the defendants who did not testify in this case as being Indians residing upon the lands in question and who had resided their all their lives, and as being either children, or brothers and sisters, or husbands and wives of some of the old witnesses who had testified, or of old Indians now dead, who lived in such villages before their death.

It was stipulated that Angel Quilpe might be considered as having been sworn for defendants and testified that he was the Indian who pointed out to Mr. Dorn, the surveyor, the boundaries of the lands that were occupied by the Mattawai Indians at the time Juan Largo came to Warner's ranch, and that the Indians had occupied the lands within the boundaries so pointed out to Dorn, and that the kind of occupancy was the same then as now, and has continued the same ever since.

It was also stipulated that Juan Largo and J. J. Warner were the same person.

To all the testimony of the foregoing witnesses plaintiff interposed the following objections, viz:

That such testimony is immaterial, incompetent, and irrelevant, on the ground that the possession of the parties referred to is immaterial in this case.

That the patent of the United States Government controls the mere matter of possession of the Indians or anyone else, which might have been exercised at any time.

That the patent can not be affected or controlled, varied, or impaired by the oral declaration of witnesses as to the occupancy or possession of parties who never made any attempt to perfect their possession so that the same could ripen into title, and that the written evidence of title is controlling upon the court as against the mere oral declarations of these witnesses.

This objection was interposed by plaintiff to the testimony of the defendants' witnesses at the beginning of the taking of their testimony, and it was stipulated that it should apply to all the testimony of all of such witnesses. These witnesses were cross-examined by plaintiff, but with the distinct stipulation that such cross-examination might be withdrawn if the court upheld the foregoing objection to the testimony in chief of such witnesses.

At the time of the decision of the cause such objection was sustained by the court to all of the defendants' testimony, hence, all of such evidence was stricken out by the court and not considered, and an exception granted to defendants.

Such ruling the defendants specify as error.

All of the stipulated facts and evidence set forth in the foregoing stipulations were stipulated to be in, subject to the foregoing objection of plaintiff, which applied as well to all of such stipulated facts and evidence as to the oral testimony of the witnesses whose depositions were actually taken; and such objection was, upon the decision of the cause, sustained as to such stipulated facts and evidence, as well as to the oral evidence of defendants' witnesses; an exception being granted to defendants, which ruling defendants specify as error. The only evidence remaining before the court, after such ruling was made, being the U. S. patent to Portilla, and the stipulation that plaintiff owned all title that passed by such patent to the patentee, and that plaintiff and his predecessor in interest had paid all taxes levied and assessed upon the premises in controversy, ever since the issue of such patent, and the stipulation that neither defendants nor their ancestors had ever presented their claims to the lands in controversy to the board of land commissioners appointed under the act of Congress of March 3rd, 1851, entitled "An act to ascertain and settle the private land claims in the State of California."

The court entered its decision herein upon the 29th day of December, 1896, giving judgment for plaintiff, and against defendants.

52 Defendants, upon the 8th day of January, 1897, filed herein and served upon counsel for plaintiff a notice of intention to move for new trial in said cause, basing said motion upon the minutes of the court, the pleadings, papers filed, exhibits, and evidences in said cause. Said notice of motion, including detailed specifications of error, is in the language following:

In the superior court of the county of San Diego, State of California.

J. Downey Harvey, administrator, with the will annexed, of the estate of John G. Downey, deceased, plaintiff, vs. José Quevas et al., defendants.

No. 8324. Notice of intention to move to set aside decision, and for a new trial.

You will please take notice, that the following named defendants herein, viz: Jesus Quevas, sometimes called Jesus Quevo, and named in the complaint herein as Henry Roe Quevas; José Quevas, sometimes called José Quevo; Antonio Cuevas, sometimes called Antonio Cuevo; José Maria, named in complaint as John Green; Francisca Quilpe, named in complaint as Mary Green; Maria Quilpe; Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Cuevo; Antonia Quevas, sometimes called Antonia Cuevo; Maria Nacho, named in complaint herein as Sarah Green; Angel Quilpe; José Dolores Palawish, sometimes called José Dolores; José Feliz, sometimes called Feliz Wichonla; Madelena Palawish; Matilda Quevas, sometimes called Matilda Palawish; Jacobo Palawish, sometimes called Acovo Palawish; José Juan, sometimes called José Juan Palawish; Jacobo Dominga Palawish; Maria Antonio Guachona, sometimes called Maria Antonia Wichonla; Maria Jesus Colol; Sebastian Palawish; Josefa Palawish, sometimes

53 called Josefa Guachona, and sometimes called Josefa Wichonla; Maria Los Angeles Palawish; Manuel Palawish; Pelegrino

Palawish; José La Luz; Saturnino Chapo; Julian Chapo, named in complaint herein as John Black; Concession Chapo, named in complaint herein as Jane Doe Quevas; Juan Quaja, named in complaint herein as John Doe Quevas; Patricio Quaja, named in complaint herein as Patricio Qusjo; Susana Quaja, named in complaint herein as Mary Doe Quevas; Maria Antonio Sobermuta, named in complaint herein as Dolores Sanone; Matilda Osun, named in complaint herein as Dolores Doe; Cenon Chapo; Renea Chapo; Louisa Chapo, named in complaint herein as Sanone Doe; Maria Guachona, named in complaint herein as Sanone Roe; Maria Antonia Guachona, named in complaint herein as Feliz; and Rosa Guachona, sometimes called Rosa Chapo, and also known as Rosa La Powat, intend to move this court in the above-entitled action that an order be made and entered therein that the decision of the court heretofore rendered, made, and entered therein, and that the judgment heretofore entered in said action upon said decision be vacated and set aside, and that a new trial be granted on the following grounds, to wit:

First. Errors in law occurring at the trial and excepted to by the the defendants;

Second. That the decision and judgment is against law;

Third. Insufficiency of evidence to justify the decision and verdict.

Said motion will be based upon the minutes of the court, and the pleadings, papers filed, exhibits, and evidence in said cause.

And the defendants hereby specify the following errors in law, occurring upon the trial of said cause, and excepted to by defendants, viz:

54 A. The court erred in sustaining the objection of plaintiff's counsel to the following question propounded by defendants' counsel to Leonardo Aulingawish, a witness on behalf of defendants, viz: "Were there Indians living there at that time?" Plaintiff's objection to such question being as follows:

"Plaintiff's counsel object to the question as immaterial, incompetent, and irrelevant, on the ground that the possession of any parties referred to is immaterial in this case; that the patent of the United States Government controls the mere matter of possession, which might have been exercised in 1850, or at any other time by the Indians, or anyone else; that the patent can not be affected, controlled, varied, or impaired by the oral declarations of witnesses as to the possession or occupancy of parties who never made any attempt to perfect their possession, so that the same can ripen into title; and that the written evidence of title, to wit, the patent, is controlling upon the court, as against the mere oral declarations or intention of this witness.

"Furthermore, that if it is attempted to establish any ancient right, if any such thing there be, the condition of affairs at the time mentioned by the question is immaterial."

The objection was sustained by the court, and it was stipulated that the same objection might be considered in and applying to all testimony taken in the case; and while there are no other rulings of the court noted upon the depositions taken, it is understood that by sustaining such objection the court did thereby sustain the same objection to all evidence offered by defendants, and defendants now specify such ruling of the court in sustaining such specific objection, and such general objection to all of the evidence offered, as error.

55 B. The court erred in excluding and not admitting in evidence the testimony of the following witnesses, whose depositions were taken under stipulation of the parties hereto, viz, the testimony of Leonardo Aulingawish, Cenon Chapo, Saturnino Chapo, Rosa Chapo, Maria Guachona, Feliz Wichonla, Antonio Quevas, Marie Quilpe, Dolores Quevas, for the reason that the testimony of each and all of such witnesses tended to show, and taken together did show, the fact, character, and extent of the use, occupancy, and possession of defendants and their ancestors of the premises in controversy from a time prior to the inception of the plaintiff's title from the Mexican Government down to date, and such testimony taken together did establish the fact that the defendants and their ancestors were Mission or Pueblo Indians, and that they had been in the continuous, undisputed, and undisturbed use, occupancy, and possession of the premises claimed by them in their answer, ever since, and for a long time prior to the inception of plaintiff's title thereto, claiming the same of their own right.

C. By stipulation of the parties, it was agreed that all the evidence taken in the case of Downey vs. Barker, No. 6919 of this court, might be considered in evidence in this case, so far as the same might in any way be applicable to the property in controversy, and although the record contains no showing that any part of such evidence was excluded or rejected, or ruled out by the court, we understand that all of the evidence that the defendants offered in the case of Downey vs. Barker was excluded by the court for the same reason that the court excluded the testimony of Leonardo Aulingawish and the other witnesses named in the above specifications of error A and B; and defendants specify such ruling of the court in excluding such evidence as error, for the

56 reason that such evidence taken together with the evidence excluded and specifically referred to in specifications of error in A and B above established the fact that the defendants were and for a long time prior to the inception of plaintiff's title from the Mexican Government had been Mission or Pueblo Indians, and that they and their ancestors during all of such time had been in the continuous use, occupancy, and possession of the premises claimed by them in their answer, claiming the same of their own right.

Defendants specify the following respects in which the evidence is insufficient to justify the decision and judgment of the court, viz:

1st. The evidence is insufficient to justify Finding I of the court, "That all of said defendants last above-named are Indians and half-breed Indians," in this: That after ruling out and excluding all of the evidence excluded by the court, as hereinabove stated, there was no evidence of any character to show as to whether or not the defendants, or any of them, were Indians or half-breed Indians;

2nd. There is not sufficient evidence to support or justify Finding II of the court that plaintiff is the owner in fee simple of the lands described in said Finding II or any part thereof, except by wrongfully and unlawfully excluding all of defendants' evidence, which was wrongfully and unlawfully excluded by the court, as hereinabove stated.

That defendants specify this finding as being not sustained by the evidence, for the reason that had the evidence introduced by the defendants and wrongfully excluded been admitted, the same would have

established the fact that plaintiff was not the owner in fee simple of the property described in paragraph 2 of said finding, but would have established the fact that the plaintiff's ownership was subject and sub-
57 ordinate to the continued right of use, occupancy, and possession by defendants of the premises *of the premises* claimed in defendants' answer.

Therefore defendants state that Finding II of the court is not sustained by the evidence, but is contrary to the evidence.

3rd. Defendants state that there is not sufficient or any evidence to justify that portion of Finding III of the court "that the claims of the defendants and each of them are without right, title, or interest whatever in or to said lands or premises, or any part thereof," in this, that had the evidence offered and introduced on behalf of defendants not been rejected and excluded, the same would have shown beyond question that the defendants and each of them are entitled to the continued use, occupancy, and possession of the premises claimed by them in their answer.

4th. There is not sufficient evidence to sustain or justify that portion of Finding IV of the court which holds that plaintiff has the ownership in fee simple of the lands and premises described in the complaint, in that, had the evidence offered and introduced by defendants not been wrongfully excluded by the court, the same would have shown that plaintiff's title to said premises was subject and subordinate to the continued right to the use, occupancy, and possession thereof by the defendants, as in their answer alleged; and for the same reason defendants allege that that portion of Finding VI of the court, holding "that said John G. Downey in his lifetime, and at the time of his death, was the owner in fee simple of all of the lands in the complaint described," is not sustained or justified by the evidence.

5th. Finding VII of the court holding that these defendants are not, and that none of them are, and that their ancestors were not, nor were any of them at the time of the acquisition from the Mexican Gov-
58 ernment by the United States of the territory embraced within the State of California, and for more than thirty (30) years prior thereto, or at all, recognized as Mission or Pueblo Indians by the laws of Spain, Mexico, and the United States, and were not in the adverse possession, occupancy, or use of the lands described in said Finding VII, is not and no part thereof is sustained by the evidence, in this, that had the evidence offered by defendants and erroneously excluded by the court, as hereinabove set forth in the specifications of error committed by the court, been admitted, as it should have been, the same taken together would prove and establish the fact that the said defendants are now, and that they and their ancestors were at the time of the acquisition from the Mexican Government by the United States of the territory embraced within the State of California, and for more than thirty years prior thereto were, and were recognized as Mission or Pueblo Indians by the laws of Spain, Mexico, and the United States, and were during all of such period in the adverse possession, occupancy, and use of the premises claimed by them in their answer herein; and that portion of such finding holding that the defendants have never been in the adverse possession, occupancy, or use of any of the lands claimed by them, and have never acquired, and did not have or hold any interest or title in said lands or any part thereof,

and that they are not, nor is either of them, in equity or otherwise, the owner or owners of or entitled to the possession, occupancy, or use of the said lands or any of them, but that plaintiff is entitled to the immediate possession of all said lands, is not, nor is any part thereof, sustained or justified by the evidence herein, in that, had all the evidence offered and introduced by defendants, which was rejected and excluded by the court,

59 as stated in defendants' specifications of error, already hereinabove set forth, been admitted, as the same should have been, it would have established the fact that defendants and their ancestors have, for a period beginning as much as thirty years prior to the acquisition of California by the United States from the Mexican Government and continuing to date, been in the adverse possession, occupancy, and use of the lands by them claimed in their answer, and have acquired the right to continue the use, occupancy, and possession of said lands and every part thereof, and are in equity the owners of and entitled to such right of possession, occupancy, and use of said lands, and that plaintiff is not entitled to the possession of the same or any part thereof.

6th. There is not sufficient evidence, or any evidence, to justify Finding VIII of the court that the grant of the Mexican Government to the predecessors of plaintiff of the lands in the complaint described was not made subject to or in subordination to the rights of the defendants, their ancestors or predecessors, or any of them, in this, that had all of the evidence offered and introduced by defendants, which was wrongfully and unlawfully rejected by the court, as hereinabove alleged in defendants' specifications of error, been admitted, the same would have shown and demonstrated that all rights of the plaintiff to the ownership of the property in controversy was subject and subordinate to the rights of the defendants, their ancestors and predecessors, to the continued use, occupancy, and possession of the premises in controversy.

7th. That Findings IX and X of the court are not sustained by, but are contrary to, the evidence herein, in the same particulars alleged and for the same reasons given as to Findings VII and VIII.

8th. That Findings XI and XII are not sustained by, but are

60 contrary to, the evidence in the same particulars and for the same reasons given as to Findings VII and VIII.

9th. That no portion of Finding XIII is sustained by the evidence, in this, that if all the evidence offered and introduced by defendants, which was admissible, had been admitted, and not excluded and rejected by the court, as alleged hereinabove in the specifications of error committed by the court, such evidence would have established and proven that the defendants and their ancestors at the time of the acquisition by the United States from Mexico of the territory embraced in the State of California, and for thirty years prior thereto, were Mission or Pueblo Indians, and that they occupied and held possession of the lands claimed by defendants in their answer herein, under and by virtue of the laws and regulations of the Government of Mexico, and under a claim of rights so to do, and that they were entitled by said laws and regulations so to use and occupy, said lands against all and any parties whatever, and that such rights so to use, occupy, and possess said lands by defendants in their answer was established and guaranteed by the laws and regulations of the Mexican Government at the time of the grant by the Mexican Gov-

ernment to the plaintiff's predecessors in interest of the lands in controversy and at the time of the transfer of sovereignty from the Mexican Government to the United States, and that the United States did, by the treaty of Guadalupe Hidalgo and by the general law of nations, recognize and stipulate to protect such right and title of defendants and their ancestors to such use, occupancy, and possession of said lands; and such evidence, had the same been admitted by the court, as it should have been, would have proven and established the fact that the lands claimed by defendants, as described in their answer, were
61 not subject, under the laws of Mexico to private grant by the Mexican Government, and that the grant, or purported grant, upon which plaintiff's title rests was subject and subordinate to the continued rights of defendants and their ancestors to the continued use, occupancy, and possession of the said premises, and would have further established the fact that the issuing of the patent by the United States Government, under which plaintiff's claim, and the confirmation of the grant, upon which said patent is based, was not intended to convey the lands and premises therein described absolutely without regard to the rights or claims of any of the said defendants, and without being subject or subordinate to any rights or claims of said defendants, but the said patent was issued and the said grant confirmed subject and subordinate to the rights and claims of these defendants and their ancestors to remain in the undisturbed use, occupancy, and possession of the said premises, and that the patent, in so far as the same failed to recognize upon its face such right of use, occupancy, and possession, was a cloud upon the title of the said defendants.

That the facts agreed upon in the stipulation before submission of this cause show that the court erred in each and all of its findings, and especially Finding XIII, for the reason that such facts so agreed upon in such stipulation show that the premises in controversy herein were, at the time of the inception of plaintiff's rights under the Mexican Government, all Indian villages, and show also that the rights of such Indians thereupon constituted a continuing servitude and burden subject to which said grant upon which plaintiff relies as the foundation of his title was based.

The defendants allege that owing to the errors of the court, as hereinabove specifically pointed out, in the rejection and exclusion of defendants' evidence, and owing to the findings of the court, as
62 above specified, being unsupported by the evidence introduced by defendants, which should have been admitted, the decision and judgment of said court is against law.

Wherefore defendants ask that an order be made and entered by the court that the decision by the court heretofore rendered, made, and entered herein, and the judgment heretofore entered in this action upon said decision be vacated and set aside, and that a new trial be granted upon the grounds hereinabove alleged.

SHIRLEY C. WARD &
FRANK D. LEWIS,
Attorneys for Defendants.

Dated this 8th day of January, 1897.

To the plaintiff herein and to his attorneys, Messrs. White and Monroe.

That said motion for new trial came on for hearing before the court upon the ninth day of February, 1897, and said motion was fully argued and submitted to the court, the same being heard by Judge E. S. Torrence, as Judge Pierce, who decided the cause, had retired from office, his said term of office having expired, and he was no longer judge of said court.

That upon the presentation and argument of such motion, it was assumed by counsel that all of the objections interposed by plaintiff to the evidence offered by defendants had been sustained and all of such evidence held by the court to be immaterial, and that the only question to be passed upon by the court upon such motion for new trial was as to whether or not the evidence so offered by defendants was material or admissible to in any way affect, vary, or control the rights of the plaintiff under the patent from the United States to Silvestre Portilla, and only such question was presented in the argument of such motion, and the suf-

63 ficiency of such evidence as was offered by defendants and excluded by the court, to establish the position of defendants, as set up in defendants' answer, was in no way controverted upon such argument, and in passing upon such motion the court considered only the question of law as to whether defendants' evidence was material and relevant, and its sufficiency was in no way considered or gone into.

That upon the twenty-fourth day of April, 1897, the said motion of defendants for new trial of said cause was denied by the court, and a minute entry of such order denying such motion duly entered, and defendants present the foregoing as a correct statement on appeal in said cause.

SHIRLEY C. WARD and
FRANK D. LEWIS,
Attorneys for Defendants.

The foregoing statement on appeal proposed and presented within time stipulated by the parties, the same is correct, and it is agreed the same may be settled by the court, as above engrossed.

SHIRLEY C. WARD &
FRANK D. LEWIS,
Attys. for Defts.

WHITE & MONROE,
Attys. for Plff.

Dated Oct. 25, '97.

This statement settled this 28th day of Oct., 1897.

E. S. TORRENCE, *Judge.*

[Copy from clerk's minute book, Saturday, April 24th, 1897.]

[Title of cause.]

On this day defendants' motion for a new trial of this cause, heretofore submitted, is by the court denied.

64 [Title of court and cause.]

Notice of appeal.

You will please take notice that the defendants in the above-entitled action hereby appeal to the supreme court of the State of California from the judgment of the above-entitled cause, entered upon the 29th day of December, 1896, in favor of plaintiff and against the defendants in said action, and from the whole thereof, and also from the order of the said

superior court of San Diego County denying defendants' motion for a new trial of the said cause, made and entered in the minutes of the said court on the 24th day of April, 1897, and from the whole thereof.

Dated this the 22nd day of June, 1897.

Yours, etc.,

SHIRLEY C. WARD and
FRANK D. LEWIS,
Attys. for Defendants.

To the clerk of the said superior court and to Messrs. White & Monroe, attorneys for plaintiff.

(Endorsed:) Service of within accepted this 22nd day of June, 1897. White & Monroe, attorneys for plffs. Filed June 23rd, 1897. Will H. Holcomb, clerk.

65 *Stipulation as to correctness of transcript.*

It is hereby stipulated that the foregoing transcript on appeal contains a correct copy of the judgment roll, the statement on appeal, the minute entry of order denying defendants' motion for new trial, and the notice of appeal filed in said cause No. 8324 in the superior court of San Diego County, California. And it is further stipulated that a good and sufficient undertaking on appeal was duly filed in said cause within the time prescribed by law.

WHITE AND MONROE,
Attorneys for Plff.
SHIRLEY C. WARD and
FRANK D. LEWIS,
Attys. for Defts.

66 (Indorsed:) Received copy of within for the judge who tried the case, this day of November, 1897. Will H. Holcomb, clerk. By , deputy. Service accepted by copy this 27th day of November, 1897. White & Monroe, attorneys for plaintiff.

67 Filed October 4, 1899. In bank.

J. DOWNEY HARVEY, ADMINISTRATOR OF THE ESTATE of John G. Downey, deceased, plaintiff and respondent,
vs.
JOSE QUEVAS ET AL., DEFENDANTS AND APPELLANTS. } L. A. No. 489.

By the court:

This case and Harvey, administrator, etc., vs. Barker et al., L. A. No. 490, just decided, involve similar propositions, and were argued and submitted together. Upon the authority of that case the judgment herein is affirmed.

68 In the supreme court of the State of California.

L. A. No. 489. Bank.

J. DOWNEY HARVEY, ETC., ADM., respondent,
vs.
JOSE QUEVAS ET AL., APPELLANT'. } On appeal from the superior court in and for the county of San Diego.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law

and premises having been fully considered, the opinion of the court herein is delivered by the court.

Whereupon it is adjudged and decreed by the court that the judgment of the superior court in and for the county of San Diego, in the above-entitled cause, be, and the same is hereby, affirmed.

I, Geo. W. Root, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 4th day of October, 1899, and now remaining of record in my office.

Witness my hand and the seal of the court, affixed at my office, this 4th day of November, A. D. 1899.

[SEAL.]

GEO. W. ROOT, *Clerk.*
By J. J. DUNCAN, *Deputy.*

(Indorsed:) L. A. No. 489. In the supreme court, State of California. Remittitur. Harvey, adm., vs. Quevas et al. Clerk's costs, $. Paid by appellant, $12.50. Paid by respondent, $. Total, $12.50. Geo. W. Root, clerk. By J. J. Duncan, deputy.

69 Supreme Court of the United States.

JESUS QUEVAS, SOMETIMES CALLED JESUS CUEVO, named in complaint herein as Henry Roe Quevas, José Quevas, sometimes called José Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; José Maria Quilpe, named in complaint as John Green; Francisca Quilpe, named in complaint as Mary Green; Maria Quilpe, Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; Maria Nacho, named in complaint herein as Sarah Green; Angel Quilpe, José Dolores Palawish, sometimes called José Dolores; José Felix, sometimes called Felix Wichonla; Madelina Palawish, Matilda Quevas, sometimes called Matilda Palawish; Jacobo Palawish, sometimes called Acovo Palawish; Jose Juan, sometimes called José Juan Palawish; Jacobo Dominga Palawish; Maria Antonia Guachona, sometimes called Maria Antonio Wichonla; Maria Jesus Colon, Sebastian Palawish, Josefa Guachona, sometimes called Josefa Wichonla; Maria Los Angeles Palawish, Manuel Palawish and Pelegrino Palawish, plaintiffs in error,

vs.

J. DOWNEY HARVEY, ADMINISTRATOR OF THE estate of John G. Downey, deceased, defendant in error.

In error to the supreme court of the State of California.

Assignments of error.

70 Now come the plaintiffs in error and for assignment of error in this case allege that the supreme court of the State of California

in giving its decision and judgment in the above entitled cause did commit error as follows, to wit:

ASSIGNMENT OF ERROR NO. 1.

This is an action to quiet title to and recover possession of certain lands in San Diego County, California. The plaintiff assert title to the lands in controversy under and by virtue of a United States patent based upon a confirmed Mexican grant; such patent having been issued under and in pursuance of proceedings had under the act of Congress of March 3rd, 1851, entitled "An act to ascertain and settle the private land claims in the State of California."

The defendants in possession claim to be Mission Indians, and that they have been in the possession, use, and occupancy of these lands ever since a time long prior to the date of the Mexican grants upon which plaintiffs' title is based, and that during all of such time they have claimed the right so to use, occupy, and possess such property as against all the world, without, however, the right to dispose of the same; and they claim that under and by virtue of the Spanish and Mexican law existing in the ceded territory prior to the transfer of sovereignty to the United States, Indians such as these were entitled for themselves and their descendants to the continued use and occupancy of the lands of which they were possessed and which they were using, so long as they or any of
their descendants remained in such possession and use, without,
71 however, having the power of alienation; and all private grants
of such lands made by the Mexican Government were under the law subject to such general right of use and occupancy in the Indians, although the grants including such lands were silent upon this subject. Defendants further claim, however, that in the grant upon which plaintiffs' title rests, the defendants' right to continued use and occupancy of these lands was expressly preserved and protected; they claim that under and by virtue of the provisions of the treaty of Guadalupe Hidalgo between the United States and the Government of Mexico, their usufructuary rights in these lands were preserved and protected. Defendants never presented their claims to their usufructuary rights in these lands to the board of land commissioners appointed under the act of Congress of March 3rd, 1851, entitled an "An act to ascertain and settle the private land claims in the State of California," and it is their claim that they were relieved of the necessity of presenting their claims to such board, for the reason that the sole purpose of the act of Congress in question was to segregate private property from public domain and to fix the boundaries of each, and that proceedings had and patents issued thereunder were binding upon the United States and the claimant only and upon parties claiming under the United States by title subsequent to the change of sovereignty, but were not binding upon third persons claiming an interest in the lands by a right or title prior and paramount to that confirmed and patented. And defendants claim that the requirements of such law as to these lands were fully met and complied with, and such lands adjudged to be private property, and not a part of the public domain by the
presentation to the board of land commissioners of the claim of one
72 Silvestre Portillo therefor (plaintiffs' predecessor in interest, the
original grantee from the Mexican Government), and by the confirmation and patenting of such claim that this vested the legal title in

Portillo, and operated to relieve the defendants from the necessity of presenting their claims to such board, but did not change the character or extent of Portillo's claim or title, but the same remained just as formerly subject to the usufructuary rights of the defendants, and charged with all of the lawful uses and subject to all of the lawful trusts previously existing. That the defendants are "third persons," as such term is used in the 15th section of the statute in question, whose rights are not concluded by proceedings had thereunder. That, as under the Mexican régime the grantee held the legal title in trust for the defendants who were the beneficial owners entitled to the use and enjoyment of the lands, this relation of privity of estate and trust was not cut off or extinguished by confirmation and patent to the grantee Portillo. Defendants further claim that they were wards of the Mexican nation, and by the transfer of sovereignty became and ever since have been wards of this nation, and that it was not intended that they should be compelled to present their claims to the board of land commissioners for confirmation under penalty of forfeiture for failure so to do.

Plaintiff on the other hand claim that the patent from the United States is conclusive of the entire controversy, and that all evidence as to the defendants being Mission Indians, or as to their ancient and continued use, occupancy, and possession of these lands is immaterial and
73 inadmissible, and all of such evidence was objected to on that ground. All testimony of defendants was introduced under such objections of plaintiff and was permitted temporarily to be received, but such objections thereto were subsequently, after the cause had been submitted, sustained, and all of such testimony of defendants stricken out and judgment given for plaintiff, and defendants' motion for a new trial denied. This position has been sustained by the supreme court of California, Chief Justice Beatty and Justices Macfarland and Temple dissenting, the majority of said court having held that the patent to plaintiffs' predecessor in interest was conclusive of the entire controversy, and that all claims of the defendants were lost by not being presented for confirmation to the board of land commissioners appointed under the act of Congress above mentioned; that defendants were not third persons whose rights were protected under the 15th section of such act of Congress, but were mere strangers to the title, and that all evidence as to the former property rights of such defendants and their ancestors under the Mexican law was therefore immaterial, inadmissible, and properly stricken out.

Plaintiffs in error claim that the supreme court of California committed error in its judgment, as follows:

First. In holding that the patent under which plaintiff below, defendant in error here, held title was conclusive of the entire controversy between the parties.

Second. In sustaining the decision of the trial court excluding all of the evidence of the defendants below, plaintiffs in error, showing
74 their rights under the Mexican law in the lands in controversy.

Third. In holding that all claims, including those of Mission Indians to property in California derived from the Spanish or Mexican Government, were lost if not presented to the board of land commissioners for confirmation under the act of Congress of March 3rd, 1851, entitled "An act to ascertain and settle the private land claims in the State of California."

Fourth. In holding that defendants below, plaintiffs in error, were strangers to the title and not "third persons" under the 15th section of the act of Congress of March 3rd, 1851, above referred to.

Plaintiffs in error claim that the error committed by the supreme court of the State of California in its judgment as aforesaid is reviewable by this court, on the ground that the judgment of said supreme court of California is against the title, right, privilege, and exemption specifically set up and claimed by plaintiffs in error under the treaty between the United States and Mexico known as the treaty of Guadalupe Hidalgo, and under the act of Congress of the United States of March 3rd, 1851, entitled "An act to ascertain and settle the private land claims in the State of California."

ASSIGNMENT OF ERROR NO. 2.

The assignments of error in the decision of the trial court—the superior court of San Diego County, California—upon defendants motion in said court for a new trial of said cause—the same appearing in the
75 transcript on appeal from said lower court to the supreme court of the State of California—are each and all well taken, and constitute good and sufficient grounds for the reversal of said trial court by the supreme court of the State of California, and each and every assignment of error contained in such transcript on appeal—both as to errors of law occurring at the trial and duly excepted to, and as to specifications of the insufficiency of the evidence to justify the decision and judgment of the court—are hereby reiterated and deemed repeated as a portion of this assignment of error in the judgment and decision of the supreme court of the State of California, as fully as if the same had been here repeated in full, reference being made to such transcript on appeal for a full statement thereof.

Wherefore plaintiffs in error allege that, in the particulars set forth in such assignments of error in said transcript on appeal contained, the judgment of the supreme court of the State of California affirming the decision of the trial court is error, reversable by this court, in that it is against the title, right, privilege, and exemption specifically set up and claimed by plaintiffs in error under the treaty between the United States and Mexico known as the treaty of Guadalupe Hidalgo, and under the act of Congress of the United States of March 3rd, 1851, entitled "An act to ascertain and settle the private land claims in the State of California."

Wherefore plaintiffs in error pray that the said judgment
76 of the supreme court of the State of California against them rendered on the 4th day of October, 1899, may be reversed and that judgment be rendered for plaintiffs in error as prayed for in their original answer filed in said cause.

SHIRLEY C. WARD.
FRANK P. FLINT.
FRANK D. LEWIS.
Attorneys for Plaintiffs in Error.

(Indorsed:) L. A. 489. Filed Nov. 6, 1899. Geo. W. Root, clerk. By A. W. Johnson, deputy.

77 In the supreme court of the State of California.

J. DOWNEY HARVEY, ADMINISTRATOR, ETC., plaintiff and respondent, *vs.* JOSÉ QUEVAS, ET AL., DEFENDANTS AND appellants. } L. A. No. 489.

Petition for writ of error.

Defend*end*ants in the above-entitled cause, feeling themselves aggrieved by the judgment entered therein upon the 4th day of October, 1899, come now, by Frank P. Flint, United States attorney for the southern district of California, Shirley C. Ward, and Frank D. Lewis, their attorneys, and petition the court for an order allowing said defendants to prosecute a writ of error to the honorable United States Supreme Court under and according to the laws of the United States in that behalf made and provided; and such writ of error having been directed to be taken to the United States Supreme Court by the Department of Justice of the United States, and no bond in such case being required by law, and all bond having been specially waived by stipulation of the plaintiffs on file herein, which said stipulation consents that writ of error herein shall operate as a supercedeas, it is therefore asked that all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Supreme Court.

And your pe'itioners will ever pray.

SHIRLEY C. WARD.
FRANK D. LEWIS.
FRANK P. FLINT.
Attorneys for Defendants.

(Indorsed:) L. A. 489. Filed Nov. 6, 1899. GEO. W. ROOT, clerk. By A. W. Johnson, deputy.

78 In the Supreme Court of the United States.

J. DOWNEY HARVEY, ADMINISTRATOR, ETC., plaintiff and respondent, *vs.* JOSÉ QUEVAS, ET AL., DEFENDANTS AND appellants. } L. A. No. 489.

Order allowing writ of error without bond.

Upon filing petition for writ of error in the above-entitled cause, and on filing an assignment of errors, it is ordered that a writ of error be and is hereby allowed to have reviewed in the United States Supreme Court the judgment heretofore entered herein; and such writ of error having been directed to be taken by the Department of Justice of the United States, and plaintiffs having filed herein a stipulation in writing waiving all bond and consenting that writ of error shall operate as supercedeas staying execution of the judgment in this cause until the writ of error was finally determined by the United States Supreme

Court, it is therefore ordered that the writ of error hereby allowed shall operate as a supercedeas and shall stay execution of the judgment of this court pending the action of the Supreme Court of the United States thereon.

W. H. BEATTY.
Chief Justice of the Supreme Court of the State of California.

(Indorsed:) L. A. 489. Filed Nov. 6, 1899. Geo. W. Root, clerk. By A. W. Johnson, deputy.

79 UNITED STATES OF AMERICA, ss.

To J. Downey Harvey, administrator of the estate of John G. Downey, deceased:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of California, wherein Jesus Quevas, sometimes called Jesus Cuevo, named in complaint herein as Henry Roe Quevas; José Quevas, sometimes called José Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; José Maria Quilpe, named in complaint as John Green; Francisca Quilpe, named in complaint as Mary Green; Maria Quilpe; Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; Maria Nacho, named in complaint herein as Sarah Green; Angel Quilpe; José Dolores Palawish, sometimes called José Dolores; José Felix, sometimes called Felix Wichonla; Madelina Palawish; Matilda Quevas, sometimes called Matilda Palawish; Jacobo Palawish, sometimes called Acovo Palawish; José Juan, sometimes called José Juan Palawish; Jacobo Dominga Palawish; Maria Antonia Guachona, sometimes called Maria Antonio Wichonla; Maria Jesus Colol; Sebastian Palawish; Josefa Guachona, sometimes called Josefa Wichonla; Maria Los Angeles Palawish;
80 Manuel Palawish, and Pelegrino Palawish are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty, chief justice of the supreme court of the State of California, this the 6th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

81 Due service and receipt of a copy of the within and foregoing citation admitted this the 10th day of November, A. D. 1899.

WHITE & MONROE,
Attorneys for Defendant in Error.

Due service and receipt of a copy of the within and foregoing citation admitted this the 13th day of November, A. D. 1899.

J. DOWNEY HARVEY,
Administrator, etc., Defendant in Error.

82 (Indorsed:) In the Supreme Court of the United States. Jesus Quevas et al., plaintiffs in error, vs. J. Downey Harvey, administrator, etc., defendant in error. Original citation. Filed Nov. 18, 1899. Geo. W. Root, clerk; by A. W. Johnson, deputy.

83 In the supreme court of the State of California.

J. DOWNEY HARVEY, ADM., ETC., RESPONDENT,
v.
JOSÉ QUEVAS ET AL., APPELLANTS. } L. A., 489.

I, Geo. W. Root, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of transcript, opinion of the court, judgment, assignment of errors, petition for writ, order allowing writ without bond, original writ, and original citation, pages 1 to 82, inc., the same constituting the papers on writ of error in the above-entitled cause as shown by the records of my office.

Witness my hand and the seal of the court this 18th day of November, A. D. 1899.

[SEAL.]

GEO. W. ROOT, *Clerk*,
By A. W. JOHNSON, *Chief Deputy*.

(Indorsed:) L. A., No. 489. In the supreme court, State of California. Harvey, adm., vs. Quevas et al.

84 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of California, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of California, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between J. Downey Harvey, administrator of the estate of John G. Downey, deceased, plaintiff, and Jesus Quevas, sometimes called Jesus Cuevo, named in the complaint herein as Henry Roe Quevas; José Quevas, sometimes called José Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; José Maria Quilpe, named in the complaint as John Green; Francisca Quilpe, named in the complaint as Mary Green; Maria Quilpe; Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; Maria Nacho, named in complaint herein as Sarah Green; Angel Quilpe; José Dolores Palawish, sometimes called Jose Dolores; José Felix, sometimes called Felix Wichonla; Madelina Palawish; Matilda Quevas, sometimes called Matilda Palawish; Jacobo Palawish, sometimes called Acovo Palawish; José Juan, sometimes called José Juan Palawish; Jacobo Dominga Palawish; Maria Antonia Guachona, sometimes called Maria Antonio
85 Wichonla; Maria Jesus Colol; Sebastian Palawish; Josefa Palawish; Josefa Guachona, sometimes called Josefa Wichonla; Maria

Los Angeles Palawish; Manuel Palawish, and Pelegrino Palawish, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Jesus Quevas, sometimes called Jesus Cuevo, named in complaint herein as Henry Roe Quevas; José Quevas, sometimes called Jose Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; José Maria Quilpe, named in complaint as John Green; Francisca Quilpe, named in complaint as Mary Green; Maria Quilpe; Dolores Quevas, sometimes called Dolores Cuevo; Rufina Quevas, sometimes called Rufina Cuevo; Marcia Quevas, sometimes called Marcia Cuevo; Antonio Quevas, sometimes called Antonio Cuevo; Maria Nacho, named in complaint herein as Sarah Green; Angel Quilpe; José Dolores Palawish, sometimes called José Dolores; José Felix, sometimes called

86 Felix Wichonla, Madelina Palawish, Matilda Quevas, sometimes called Matilda Palawish, Jacobo Palawish, sometimes called Acovo Palawish, José Juan, sometimes called José Juan Palawish, Jacobo Dominga Palawish, Maria Antonio Guachona, sometimes called Maria Antonio Wichonla, Maria Jesus Colol, Sebastian Palawish, Josefa Guachona, sometimes called Josefa Wichonla, Maria Los Angeles Palawish, Manuel Palawish, and Pelegrino Palawish, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within sixty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller Chief Justice of the United States, the 17th day of January, in the year of our Lord, nineteen hundred.

[SEAL]

SOUTHARD HOFFMANN,
Clerk U. S. Circuit Court, Northern District of California.

87 The foregoing writ of error is hereby allowed; and the same having been directed to be taken by the Department of Justice of the United States; and the defendant in error having waived, in writing, all bond, and consented that writ of error may operate as a supersedeas:

It is hereby ordered that no bond be required for the prosecution of said writ and that the same operate as a supersedeas.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

88 (Indorsed:) L. A. No. 489. (Original.) Supreme Court State of California. Harvey, adm., vs. Quevas et al. Writ of error. Filed Jan. 10, 1900. Geo. W. Root, Clerk. By A. W. Johnson, deputy.

89 UNITED STATES OF AMERICA, ss.

To J. Downey Harvey, administrator of the estate of John G. Downey, deceased:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within 60 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Jesus Quevas, sometimes called Jesus Cuevo, named in complaint herein as Henry Roe Quevas, José Quevas, sometimes called José Cuevo, Antonio Quevas, sometimes called Antonio Cuevo, José Maria Quilpe, named in complaint as John Green, Francisca Quilpe, named in complaint as Mary Green, Maria Quilpe, Dolores Quevas, sometimes called Dolores Cuevo, Rufina Quevas, sometimes called Rufina Cuevo, Marcia Quevas, sometimes called Marcia Cuevo, Antonio Quevas, sometimes called Antonio Cuevo, Maria Nacho, named in complaint herein as Sarah Green, Angel Quilpe, Jose Dolores Palawish, sometimes called José Dolores, Jose Felix, sometimes called Felix Wichonla, Madelina Palawish, Matilda Quevas, sometimes called Matilda Palawish, Jacobo Palawish, sometimes called Acovo Palawish, Jose Juan, sometimes called José Juan Palawish, Jacobo Dominga Palawish, Maria Antonia Guachona, sometimes called Maria Antonio Wichonla, Maria Jesus Colol, Sebastian Palawish, Josefa Guachona, sometimes called Josefa Wichonia, Maria Los Angeles Palawish, Manual Palawish, and Peledrino Palawish are plaintiffs in
90 error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty, chief justice of the supreme court of the State of California, this the 17th day of January, in the year of our Lord nineteen hundred.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

91 Receipt of a copy of the within and foregoing citation admitted this the 19 day of January, A. D. 1900.

WHITE & MONROE,
Attorneys for Defendant in Error.

Receipt of a copy of the within and foregoing citation admitted this the 20 day of January, A. D. 1900.

J. DOWNEY HARVEY,
Administrator of the Estate of John G. Downey, Deceased, Defendant in Error.

92 (Indorsed:) L. A. No. 489. (Original.) Supreme court, State of California. Harvey, adm., vs. Quevas et al. Citation. Filed Feb. 5, 1900. Geo. W. Root, clerk. By A. W. Johnson, deputy.

93 In the supreme court of the State of California.

J. DOWNEY HARVEY, ADM., ETC., RESPONDENT,
vs.
JOSÉ QUEVAS ET AL., APPELLANTS. } L. A. 489.

I, Geo. W. Root, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of transcript, opinion of the court, judgment, assignment of errors, petition for writ, order allowing writ without bond, original writ, and original citation, pages to inclusive, the same constituting the papers on writ of error in the above-entitled cause, as shown by the records of my office.

Witness my hand and the seal of the court this 5th day of February, A. D. 1900.

[SEAL.]

GEO. W. ROOT, *Clerk.*
By A. W. JOHNSON, *Chief Deputy.*

(Indorsed:) L. A. No. 489. In the supreme court, State of California. Harvey vs. Quevas et al.

(Indorsement on cover:) File No. 17651. California supreme court. Term No. 537. Jesus Quevas, sometimes called Jesus Cuevo, et al., plaintiffs in error, vs. J. Downey Harvey, administrator of the estate of John G. Downey, deceased. Filed February 21st, 1900.

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